Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

CHRISTOPHER T HARRIS,
Petitioner,

v.

CITY OF DORAVILLE, ET AL.,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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35 pp

QUESTIONS PRESENTED FOR REVIEW

Petitioner contends he was falsely arrested by certain of respondents in 1996. The state of Georgia officially closed the criminal case against petitioner in 1998 due to "insufficient evidence". But rather than dismissing the charges, the state left the case pending, using a prosecutorial procedural device known in Georgia as "NPGJ" (Not Presented to Grand Jury). After the criminal case was closed, petitioner sued the respondents under 42 U.S.C. § 1983 for illegal search and seizure, false arrest and related torts. But the U.S. District Court refused to compel production of documents on grounds that all documents relating to the arrests of petitioner were protected from disclosure as part of an "ongoing criminal investigation". Then the court dismissed petitioner's civil action because petitioner lacked documentation to prove that he was falsely arrested! The Court of Appeals affirmed the dismissal, asserting that "the requested materials related to the pending felony charge of sexual exploitation of children and, therefore, constituted an ongoing criminal investigation." Yet after well over five (5) years since the false arrests and over three (3) years since the criminal case was closed, it remains closed. Thus the following questions are presented:

1. Is the Georgia prosecutorial procedural device "NPGJ" (Not Presented to Grand Jury) virtually equivalent to the former North Carolina procedural device of *nolle prosequi* with leave and thus unconstitutional in accordance with this court's decision in *Klopfer v. North Carolina*, 386 U.S. 213 (1967)?

2. Did the district court abuse in discretion in denying petitioner's motion to compel production of documents related to the arrest of petitioner under the premise that the refusal by the state to bring petitioner to trial or formally dismiss the criminal case against him constituted an "ongoing criminal investigation"?

3. Should the district court have granted petitioner's Motion for Immediate Stay for the resolution of the arrest warrant as equitable litigation to the civil action?

4. Was the district court justified in granting respondents' motion for summary judgment by dismissing the civil action even though petitioner had been denied sufficient opportunity for discovery?

5. Did the district court contradict the U.S. Constitution by ruling that police

officers were performing "discretionary functions" when they preformed searches, seizures and arrests of petitioner without warrants?
6. Was the district court justified in granting defendants' motion for summary judgment and dismissing the civil action under the premise that the arresting officers were entitled to qualified immunity because there was probable cause for the arrest of petitioner as a pure question of law?

Parties

City of Doraville, Georgia;

City of Doraville Police Department;

Chief of Police Ronald E. Davis, Sr.;

Major Clifford M. Edwards;

Lt. Robert J. Brown;

Det. Timothy L. Baggett;

Sgt. Henry M. Pritchett;

Officer Bethann M. Stock;

Unknown Doraville police officers, one of whom was later identified as officer B. J. Baker. Officer Baker assisted Detective Baggett with the false arrests of petitioner, the search and seizures of petitioner's property, the imprisonments of petitioner in the Doraville City jail, the transportation of petitioner to DeKalb Magistrate Court on May 9, 1996, and the transfer of petitioner to and imprisonment in the DeKalb County jail. The district court denied petitioner's motion to add officer B.J. Baker as a named defendant, giving as reason that the discovery of his identity had come too late in the proceedings.

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OPINIONS BELOW

The opinions and judgment of the U.S. Court of Appeals for the Eleventh Circuit, case no. 00-13645, is unpublished. They are included at Supp. App. 35 through Supp. App 44. The opinions and judgments of the district court in this civil action are also unpublished. They are included at Supp. App. 1 through Supp. App. 34. Petitioner also includes in the regular appendix herein at App. 14 the April 29, 1998 decision of the Superior Court of DeKalb County denying the petitioner's motion to dismiss arrest warrant no. 96W01014 in the 1996 criminal case arising from the alleged false arrests. Petitioner appealed the denial of the motion to dismiss as a violation of his constitutional right to a speedy trial through the state court of Appeals and the Supreme Court of Georgia and eventually all the way to this court, *Harris v. Georgia*, 120 S. Ct. 177, docket no. 99-115 (1999), *cert. denied*. All appeals of the Superior Court's ruling denying petitioner's motion to dismiss were ostensibly denied as interlocutory without certification for appeal because DeKalb County Superior Court Senior Judge Edward D. Wheeler denied the petitioner's Motion for Certification of Ruling.

STATEMENT OF JURISDICTION

The final judgment of the court of appeals was entered on April 6, 2001, case no. 00-13645. A petition for rehearing was denied on May 24, 2001. App. No. 00-13645-FF, ORD-41. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). This petition for certiorari is timely filed.

CONSTITUTIONAL PROVISIONS AND FEDERAL AND STATE STATUTES

The appendix herein sets forth verbatim the following referenced constitutional provisions: Amendments of the U.S. Constitution: Fourth, Fifth, Sixth and Fourteenth. The appendix herein sets forth verbatim all or relevant parts of the following referenced statutory and regulatory provisions: Georgia statutes O.C.G.A. § 16-12-100, Sexual Exploitation of Children; O.C.G.A. § 17-7-170, Georgia Speedy Trial laws which apply for indicted criminal cases; and O.C.G.A. § 17-12-32 through O.C.G.A. § 17-12-33, the Georgia statutes implementing the Georgia Indigent Defense Council.

This civil action also relies upon or makes reference to federal statutes 18 USC § 3161 through 18 USC § 3162, which are codified sections of the Federal Speedy Trial Act of 1974; 28 U.S.C. § 1367, Supplemental Jurisdiction; 42 U.S.C. § 1983, Civil Action for Deprivation of Rights and 42 U.S.C. § 1985, Conspiracy to Interfere with Civil Rights. The text of the federal statutes will be set out in appendix to Brief if the petition is granted.

Petitioner Christopher T. Harris, *pro se*, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on April 6, 2001.

STATEMENT OF THE CASE

A. Statement of facts

Petitioner was arrested twice in May and June of 1996 by certain of respondent police officers employed by the city of Doraville, Georgia. Petitioner alleges both arrests were maliciously motivated as retaliation for his reporting and testifying in a court of law to criminal misconduct by respondent Doraville police officer Beth Stock and to hinder any suit that the petitioner might bring against the City of Doraville alleging negligent breach of legal duty which needlessly put petitioner at imminent risk of death and that actually resulted in gunshot injuries that respondent officer Stock could have and should have taken action to prevent as responding officer to the petitioner's 911 call to Doraville police for emergency assistance.

Petitioner reported the breach of legal duty as well as false reporting by respondent officer Beth Stock to her superiors and fellow officers but instead of taking actions to remedy petitioner's verbal and written complaints, other Doraville police officers instigated a criminal investigation against him in an attempt to incriminate, incarcerate and otherwise thwart the petitioner's cause of action against respondent officer Beth Stock in her official and individual capacity and her superiors and the City of Doraville, each of whom knew or should have known that respondent officer Stock was unable or unwilling to perform her duties as a police officer. Officer Stock was forced to resign from the Doraville police department six (6) months after the incident at the crux of this civil action due to her continuing acts of misconduct, drug and alcohol abuse and unacceptable performance of her duties. She is no longer employed as a police officer. But at the time of her misconduct that instigated all of these proceedings, the Doraville police department was still trying to cover up for her, and part of that coverup was to attempt to maliciously incriminate the petitioner under color of legal process, resulting in the two false arrests.

In spite of the petitioner's persistent verbal and written demands for speedy trial and his formal motion to dismiss, the DeKalb County District Attorney declined to prosecute or even seek indictment against the petitioner due to "insufficient evidence". The District Attorney closed the case on

January 14, 1998 but left the warrant pending under the unconstitutional[1] prosecutorial device of nolle prosequi with leave, known in Georgia as "NPGJ" (Not Presented to Grand Jury).

The District Attorney argued in a memorandum submitted in response to the petitioner's 1998 motion to dismiss that dismissing the warrant would "subject officers to possible liability for malicious arrest." (Memorandum from Jacqueline Hardy to DeKalb County Superior Court Judge Edward D. Wheeler re: Response to Defendant's Brief in *State of Georgia vs. Christopher Harris*, at 2 ¶ 2 (App. 13).)

The Superior Court concurred with the district attorney and denied the petitioner's motion to dismiss and then denied the petitioner's Motion for Certification in order to stymie any appeal of that decision. The petitioner's appeal, presented eventually in this court as *Harris v. Georgia*, docket no. 99-115, 120 S.Ct. 177, was rejected as interlocutory without certification.

B. History of Proceedings Below

Nevertheless, petitioner filed suit in U.S. District Court against the respondents on May 9, 1998, alleging illegal search and seizure and false arrest in violation of the Fourth Amendment, negligent breach of legal duty and several other related egregious torts, case no. 1:98-CV-1326-JEC.

The district court upheld the respondents' use of the unconstitutional pendency of the undismissed and untried arrest warrant to deny all discovery related to the arrests of the petitioner under the illegitimately asserted doctrine of protection from disclosure due to "ongoing criminal investigation." Then the district court dismissed the case in its entirety on grounds that the petitioner had "failed to carry his burden of demonstrating that the officers violated 'clearly established

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[1] *Klopfer v. North Carolina*, 386 U.S. 213 (1967), which defines nolle prosequi with leave as a "procedural device whereby the accused is discharged from custody but remains subject to prosecution at any time in the future at the discretion of the prosecutor" which is identical to the effect of Georgia's NPGJ prosecutorial case relegation. *See* District Attorney letter to petitioner regarding NPGJ relegation of criminal charges against him at App. 10 and Order of DeKalb County Superior Court at App. 14.

law' by arresting him on these two occasions." May 6, 2000 Order of District Court at 51 (Supp. App. 30.)

The District Court's assertions thereafter that "Indeed, plaintiff's admissions in his deposition clearly demonstrate that the officers had actual probable cause to arrest..." are not based in law because nothing exhibited or declared in connection with the deposition was in violation of law, whether state of federal. Even the court's assertion in the opinion paragraph above that the petitioner "responded 'and now the world will know...'" was fabrication, a deliberate misrepresentation perpetrated by respondent officer Baggett intended to insinuate that the petitioner was in the business of child pornography, denied and ***proven*** false by plaintiff in deposition by reference to the actual recording.

No one reported any crimes by the plaintiff, but nothing more than suspicion and innuendo, propagated in large part by a woman named Sondra London, who was living in Florida at the time of all these events, had never set foot in petitioner's home in Doraville, and couldn't possibly have known what the petitioner did or did not have in his possession since the petitioner was not even on speaking terms with her at the time and had not been since 1995. Ms. London was at the time of the petitioner's arrest engaged to be married to Danny Harold Rolling, the notorious serial killer of five (5) University of Florida students and three (3) Mississipi residents. Rolling currently resides on Florida's death row. Ms. London's whereabouts are unknown to the petitioner at this time.

Incredibly, the district court denied the petitioner's Motion to Compel Sondra London to testify in deposition in this case even though she was living in Atlanta at the time the motion was submitted. Once again, the plaintiff's opportunity for discovery was thwarted by the district court itself, acting to protect the respondents from liability, just as the DeKalb County District Attorney did when he refused to dismiss the arrest warrants because doing so would "subject officers to liability for malicious arrest." (Hardy Memorandum, supra, at 2 ¶ 2. (App. 13.))

The Court of Appeals affirmed the dismissal of the plaintiff's civil action with the mere assertion that "the requested materials related to the pending felony charge of sexual exploitation of children and, therefore, constituted an ongoing criminal investigation." That flies in the face of the rule of stare decisis as evinced by *Capitol Vending Co., Inc., v. Baker et al.*, 35 F.R.D.

510, 511 (District Court D.C.) (1964), holding that there must be some reasonable terminus to any criminal investigation. Once an arrest has been made, it is also a flagrant violation of the Sixth Amendment to the U.S. Constitution. But the district court was unmoved by petitioner's complaint, argument and proof that the state was holding the charge pending for the sole purpose of hindering petitioner's civil action against other state agents.

The district court's apparent prejudice against petitioner was continued by the court of appeals. Even though the Eleventh Circuit has ruled that "the court is to view all evidence and factual inferences in a light most favorable to the nonmoving party", *Samples v. City of Atlanta,* 846 F.2d 1328, 1330 (11th Cir. 1988), the three-judge panel that affirmed the district court stated for the record that in its de novo review of the district court's decision granting summary judgment, it had viewed "the evidence and all reasonable inferences in favor of defendants." *See* Opinion of Court of Appeals at 2, n. 1 (Supp. App. 36).

REASONS FOR GRANTING THE WRIT

This is a case of great public importance because it involves the deprivation by the state of Georgia of the constitutional rights of citizens to a speedy trial when they may have been arbitrarily and capriciously arrested and therefore never indicted. And it involves the state of Georgia's ongoing and ever worsening deprivation of the rights of all Georgia citizens to their constitutional rights to a speedy trial, or indeed, any trial at all!

The Georgia Indigent Defense Council (GIDC) was established as a state agency by the state legislature to try to ensure that all criminal defendants, especially those who cannot afford to pay for legal counsel, are afforded their constitutional rights. See O.C.G.A. §§ 17-12-32 through 17-12-33. (App. 7).

In its current report for the year 2000, the GIDC writes,

> **"Delay in the formal prosecution of cases is a serious problem. Defendants often sit in jail for months waiting for the prosecution to take their case to the grand jury for indictment. These delays, which are out of the control of the defense, substantially increase expenditures for counties which must continue to pay the costs of housing inmates in county jails long after cases should be ready for disposition through trial or a guilty plea."** Georgia Indigent Defense Council 2000 Report at 6.

http://www.gidc.com

A recent article in the Atlanta Constitution newspaper is even more explicit and morose as to the deplorable conditions in Georgia:

> **"Since he became a public defender in North Georgia last year, Drew Powell has found himself doing things he never dreamed he'd have to do.**
>
> **"Like advising some clients to plead guilty before he's had enough time to adequately assess their cases. Or failing to file a motion to suppress evidence because there are just too many motions to be filed.**
>
> **"'I didn't realize it was going to be as bad as it is,'" says Power, 36, who heads the public defender's office for Habersham, Rabun and Stephens counties....**
>
> **"Critics of Georgia's system say some county programs deny the poor their fundamental rights guaranteed by the U.S. Constitution. These critics note that many indigent defendants languish in jails for months before seeing their lawyer for the first time. Many cases are never investigated. Guilty pleas are often entered by poor defendants after meeting their lawyer for the first time in court and only a brief conversation about the case....**
>
> **"'What we're doing is morally wrong and fundamentally unjust,'said Emmet Bondurant, a prominent Atlanta lawyer....**
>
> **"Judge Ernest H. Woods III, chief judge of the Mountain Judicial Circuit where Powell toils as a public defender, agrees that changes are necessary."** Atlanta Constitution, August 13, 2001, pps. B-1, B-4, under inside headline, "Indigent suspects may wait months for a trial."

Petitioner has been waiting for over five (5) years for either a trial or dismissal!

These tragic and highly inflammatory problems with the judicial and criminal justice system in Georgia are the direct result of Georgia's lack of statutory protection for the speedy trial rights of criminal defendants who have been arrested but never indicted. The only possible protection for such defendants is the Sixth Amendment of the U.S. Constitution and similar

constitutional protections in the Georgia Constitution. But when the lower courts simply ignore the constitution, as they have repeatedly in the instant case, the very foundation of our social contract is defeated! In Georgia's case, a large portion of the population is being criminalized unjustly, and even young children are victimized by the atrocity that is the Georgia criminal justice system.

In the instant case, the state has used the NPGJ device to not only deny the petitioner his right to a speedy trial, but to prevent him from obtaining any discovery whatsoever regarding the false arrests. In Georgia, the deprivation of constitutional rights is commonplace for the very reason that the perpetrators of those deprivations are protected from liability by the various state actors, including the legislature, which has failed in its Constitution mandate to enact laws to protect the constitutional rights of citizens, prosecutors, who deliberately postpone indictments or, as in the instant case and most other cases of false arrest, never even attempt to indict because doing so would invoke defendant's statutory rights to a speedy trial under O.C.G.A. 17-7-170 and even the courts, the last bastion of freedom in America! Witness the instant case as it has wound its way through all possible courts, even to the highest court in the land, with cert denied in 1999, *Harris v. Georgia, supra*! The practioners of such injustice count on the fact that the Supreme Court of the United States can only handle a small percentage of the cases that are brought to it. Yet all the while this systematic injustice in Georgia just gets worse. The blame must ultimately rest with the courts, entrusted by the founding fathers with the safekeeping of our freedoms.

Comes now petitioner to this court once again to beg the learned justices to take advantage of this opportunity and use this case to set a precedent for any and all uses by state prosecutors of the procedural device of "nolle prosequi with leave" even when it is operated under such appellations as "Not Presented to Grand Jury" as in Georgia.

By reference to *Klopfer, supra*, petitioner has shown that this Court has already ruled that a device equivalent to the NPGJ device of Georgia prosecutors is unconstitutional. The decisions of the state courts in the instant case and of the U.S. District Court, which has allowed this injustice to be used to thwart petitioner's constitutional right of access to the federal courts for the remedy of deprivation of constitutional rights, are clearly antithetical to the principles of the United States Constitution and the prior rulings of the highest court in the land.

The deprivation of the constitutional rights of citizens to a speedy trial is an issue of great concern, gravity and importance to the public. Due to such

deprivations, on top of the extreme difficult in prevailing in a civil action against officers and state agencies already rendered virtually immune to any liability by various doctrines of immunity, state law enforcement agents are wont to abuse their police powers at every opportunity.

Even though the Georgia State Legislature has not passed legislation to protect the constitutional rights to a speedy trial of a defendant who has been arrested but never indicted nor formally accused, the fact remains that the right to a speedy trial is a right accorded to every accused citizen under the state and federal constitutions. An arrested person who is not indicted has as much right to a speedy trial as anyone:

> **"*United States v. Marion*, 404 U.S. 307 (1971), held that one's right to a speedy trial attaches when one becomes an accused and identified that point as arrest or when formal charges (indictment or information) are brought, whichever is earlier. This view was recently reaffirmed in *Dillingham v. United States*, 423 U.S. 64 (1975), which reversed the Fifth Circuit Court of Appeals for failure to apply sixth amendment standards to post-arrest, pre-indictment delay in *United States v. Palmer*, 502 F.2d 1233 (1974)." *Haisman v. State*, 242 Ga. 896, 897 (2) (252 S.E.2d 397).**

Georgia prosecutors use the NPGJ disposition of criminal cases that cannot be prosecuted to postpone prosecution indefinitely. The purpose is to circumvent constitutional and statutory protections against false arrest in order to protect the police officers with whom they work from being prosecuted or sued for misconduct and abuse of their police powers.

This fact that Georgia prosecutors are using a prosecutorial device that was ruled unconstitutional in 1967 is demonstrated clearly by the facts of the instant case as well as circumstances revealed by studies of this situation.

CONCLUSION

The instant case presents questions of exceptional importance affecting the most fundamental rights of citizens in any civilized nation of justice. These are rights that aer so important that they were embodied in the Bill of Rights of the U.S. Constitution. Every accused citizen has a right to a speedy trial by a jury of his peers. This Court ruled in *Klopfer*, *supra*, a landmark decision, that the speedy trial provisions of the Sixth Amendment apply to every citizen in every prosecution brought under state or federal law.

The right to a speedy trial is a right that is also embodied in the Bill of Rights of the Georgia Constitution, at Article 1, Section 1, paragraph XI. (App. 22.)

And any citizen who has reason to believe that he or she has been deprived of their constitutional rights should not have their rights further deprived by sabotage of their right to a fair hearing in a court of law. In the instant case, the district court has ruled, and the Court of appeals has affirmed that the state's deprivation of petitioner's constitutional right to a speedy trial can be used to further deprive petitioner of his right to a fair hearing in a civil action for the deprivation of civil rights by denying petitioner his opportunity for discovery.

Petitioner prays that the Court will use the instant case as an opportunity to review the prosecutorial device of NPGJ in Georgia and other states where it may go by other names. Regardless of the name that is used for it, the effect is the same, to deny justice and promote the tyranny of the state.

As described in petitioners original petition for cert. to this court, "[I]n the instant case, the state wrote that it would not dismiss because it wanted to protect the arresting officers "from possible liability for malicious arrest". (Hardy Memo, App. 13 ¶ 2.)

The facts of this case have consummated that determination, with the able and willing assistance of the district court, which denied to the plaintiff his opportunity for discovery and then dismissed the case for lack of information, and the court of appeals, which affirmed the decision without having conducted a fair appraisal of the facts of the case.

Wherefore, petitioner prays that this court will grant the plaintiff's petition for certiorari so that this matter which is of such grave import to the citizenry of Georgia may be more thoroughly explicated for the consideration of the court.

This the 22nd day of August, 2001.

Respectfully submitted,

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Provisions of the Constitution of the United States

[Amendment IV]
[Security from Unwarrantable Search and Seizure]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[Amendment V]
[Rights of Accused in Criminal Proceedings]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Amendment VI]
[Right to Speedy Trial, Witnesses, etc.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

[Amendment XIV]

Section 1.

[Citizenship Rights Not to Be Abridged by States]

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutory Provisions from Official Code of Georgia Annotated, (O.C.G.A.)

TITLE 16. CRIMES AND OFFENSES -
CHAPTER 12
OFFENSES AGAINST PUBLIC HEALTH AND MORALS
ARTICLE 3. OBSCENITY AND RELATED OFFENSES
PART 2. OFFENSES RELATED TO MINORS GENERALLY

O.C.G.A. § 16-12-100. Sexual exploitation of children; reporting violation; forfeiture; penalties.

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;

(H) Defecation or urination for the purpose of sexual stimulation of the viewer; or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

(5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

(e) (1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and

(B) Any property used, or intended to be used, to commit such offense

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f) (1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner.

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years and by a

fine of not more than $100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates paragraph (8) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

TITLE 17
CRIMINAL PROCEDURE
CHAPTER 7
PRETRIAL PROCEEDINGS
ARTICLE 7
DEMAND FOR TRIAL;
ANNOUNCEMENT OF READINESS FOR TRIAL.

O.C.G.A. 17-7-170. Demand for trial; discharge and acquittal for lack of prosecution.

(a) Any person against whom a true bill of indictment or an accusation is filed with the clerk for an offense not affecting his life may enter a demand for trial at the court term at which the indictment or accusation is filed or at the next succeeding regular court term thereafter; or, by special permission of the court, he may at any subsequent court term thereafter demand a trial. In either case, the demand for trial shall be served on the prosecutor and shall be binding only in the court in which the demand is filed, except where the case is transferred from one court to another without a request from the defendant.

(b) If the person is not tried when the demand is made or at the next succeeding regular court term thereafter, provided at both court terms there were juries impaneled and qualified to try him, he shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation. For purposes of computing the term at which a misdemeanor must be tried under this Code section, there shall be excluded any civil term of court in a county in which civil and criminal terms of court are designated; and for purposes of this Code section it shall be as if such civil term was not held.

CHAPTER 12
LEGAL DEFENSE OF INDIGENTS
ARTICLE 2
STATE FUNDED LOCAL INDIGENT DEFENSE PROGRAMS

O.C.G.A. § 17-12-32. Georgia Indigent Defense Council - Establishment; composition; qualifications, appointment, and terms of office of members; vacancies; meetings; officers; compensation; legal status; powers.

(a) There is established, as a separate agency within the judicial branch of state government, the Georgia Indigent Defense Council.

...

O.C.G.A. § 17-12-33 Georgia Indigent Defense Council - Purposes and duties.

The Georgia Indigent Defense Council shall have the following purposes and duties:

(1) To administer funds provided by the state and federal governments to support local indigent defense programs provided for in Code Section 17-12-38;

(2) To recommend uniform guidelines consistent with this article within which local indigent defense programs established under this article shall operate;

(3) To provide to local programs and attorneys who represent indigents technical and research assistance, planning assistance, clinical and training programs, and other administrative services to fulfill the purpose of this article; and

(4) To prepare budgets, reports, and management information required for the responsible implementation of this article.

LAW OFFICE
STEVEN H. SADOW, P.C.
800 GRANT BUILDING
44 BROAD STREET, N.W.
ATLANTA, GEORGIA 30303

(404) 577-1400
FAX (404) 577-3600

August 12, 1997

Michelle McBrayer, Investigator
DeKalb County District Attorney's Office
700 N. McDonough Street
Decatur, Georgia 30030

RE: *State v. Christopher T. Harris,*
Warrant Nos. 96W-01014 and 96W-97454

Dear Michelle:

This is to confirm our telephone conversation of several days ago in which you indicated that your investigation of Mr. Harris was still continuing. As you are well aware, Mr. Harris was arrested on 5/9/96 and 6/17/96 on the charges of sexual exploitation of children. Over 14 months has passed since then. I have contacted you on repeated occasions during this time period to check on the progress of the investigation as well as to assert that Mr. Harris wants this matter resolved.

It is our belief that your office has had sufficient time to fully investigate this matter and the defendant's state and federal constitutional rights to a speedy trial have been violated. Accordingly, Mr. Harris hereby asserts in writing his demand for a speedy indictment and trial.

Sincerely,

/s/ Steve Sadow
Steven H. Sadow
Attorney for Defendant

SHS:cmp
cc: J. Tom Morgan, District Attorney

OFFICE OF THE DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL CIRCUIT
DEKALB COUNTY COURTHOUSE
DECATUR, GEORGIA 30030

J. TOM MORGAN 404/371-2561
DISTRICT ATTORNEY FAX 404/371-2981

January 9, 1998

Writer's Direct 371-2398

RE: CHRISTOPHER HARRIS
CHARGE: SEXUAL EXPLOITATION OF CHILDREN

TO WHOM IT MAY CONCERN:

CHARGES IN THE ABOVE-REFERENCED CASE WILL NOT BE PRESENTED TO THE GRAND JURY DUE TO INSUFFICIENT EVIDENCE TO ESTABLISH THE ELEMENTS OF THE ABOVE OFFENSE. PROPERTY WHICH WOULD NOT HAVE BEEN USED IN A TRIAL OF THE ABOVE CASE WHICH IS RETAINED BY THE DEKALB DISTRICT ATTORNEY'S OFFICE OR DORAVILLE POLICE DEPARTMENT MAY BE RELEASED TO CHRISTOPHER HARRIS

SINCERELY,

/s/ Jacqueline S. Hardy
JACQUELINE S. HARDY
ASSISTANT DISTRICT ATTORNEY

OFFICE OF THE DISTRICT ATTORNEY
STONE MOUNTAIN JUDICIAL CIRCUIT
DeKalb County Courthouse
556 North McDonough Street
Decatur, Georgia 30030
Telephone (404) 371-2561 Facsimile (404) 371-2981

J. TOM MORGAN
District Attorney

RECORDS DIVISION
(404) 371-2575

1-14-98

Christopher T. Harris
3321 Wheeler Dr
Doraville GA 30340

STATE OF GEORGIA vs.: Christopher Thad Harris
CHARGE(S): Sexual Exploit of children
DATE OF ARREST: 06-20-96
DATE CLOSED: 01-08-98

You are advised that the above-styled felony criminal matter will not be presented to the DeKalb County Grand Jury at this time. The case will remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary. You will be notified if the case is re-opened. The official disposition of these charges at this time is "Not Presented to Grand Jury", also referred to in criminal history as "NPGJ". If you were fingerprinted at the time you were booked into the DeKalb County Jail, this disposition will be sent to the Georgia Crime Information Center for entry on your criminal history record as required by Georgia law. The arrest for these charges will remain a permanent part of your criminal history. It is important to recognize that an arrest is not the same thing as a conviction.

If you were booked at the DeKalb County Jail and bonded out without using the services of a bonding company, the person who posted your bond may be entitled to a Release of the bond lien or property or refund of the cash. The person whose name is on the cash or property bond receipt issued at the Jail must personally bring the receipt and photo identification to the District Attorney's Records Division, Seventh Floor, DeKalb County Courthouse,

between the hours of 9:00 A.M. and 4:30 P.M. to obtain a written Release.

RECORDS DIVISION

/s/ Carole R. Louviere
Supervisor

Technicians initials: /s/ CMScott
Date Mailed: 01-14-98

MEMORANDUM

TO: JUDGE WHEELER, SENIOR JUDGE

FROM: JACQUELINE HARDY, ADA /s/ jsh

DATE: MARCH 13, 1998

RE: RESPONSE TO DEFENDANT'S BRIEF
STATE OF GEORGIA VS. CHRISTOPHER HARRIS

CC: MIKE KATZ, ATTORNEY FOR DEFENDANT

Two warrants are at issue in the above-referenced case. Warrant No. 96W97454 was issued on May 9, 1996 for the misdemeanor offense of Sexually Explicit Conduct by a Minor for Use in a Visual Medium involving a number of photographs of a female child posing in a sexually arousing manner. For whatever reason, this warrant was not subjected to a probable cause determination. Warrant No. 96W01014 was issued on June 17, 1996 for the felony offense of Sexual Exploitation of Children involving a videotape of a female child dancing and exposing her breasts. This warrant was bound over to DeKalb Superior Court after a determination of probable cause was made by Judge Elliott Shoenthal, Magistrate, on July 15, 1996. Defendant is requesting that both of these warrants be dismissed.

While the State concedes that Warrant No, 96W97454 should be dismissed since there was no probable cause determination and the State is not proceeding with indictment on that charge, we disagree that the second warrant, Warrant No. 96W01014, should be dismissed. Once a probable cause determination is made, there should be no need to dismiss a warrant if the State decides not to pursue the case. In the cases cited by Defendant, there is no indication that a probable cause determination had ever been made and therefore a dismissal of those warrants was appropriate.

In order to determine probable cause, a judge must find whether it is more probable than not that the defendant committed the acts charged. In

this case, on July 15, 1996, when Judge Shoenthal heard the facts of the case, he made that determination based on the facts before him at the time of the hearing and he bound the case over to Superior Court. A probable cause standard is not the applicable standard used by the District Attorney's Office in deciding whether or not to prosecute. Prior to such a decision being made in the District Attorney's Office, a lengthy investigation is conducted which often reveals facts which were not known to the Magistrate or the investigating officer. The fact that the District Attorney's Office decides not to prosecute based on information gained through an investigation should not negate the prior determination of probable cause.

Dismissing the warrant would not only negate Judge Shoenthal's previous order, which was valid at the time made, but it would subject officers to possible liability for malicious arrest and would create an undue hardship on the District Attorney's Office. If a Defendant is entitled to have a warrant dismissed any time the prosecuting authority decides not to prosecute, courts would be flooded with such requests. Any time a case is dismissed by way of not presenting the case to the grand jury or a nolle prosequi, a defendant would then be entitled to have such warrants be dismissed. Clearly that is not the intention of the appellate courts in affirming the dismissal of the warrants in the cases cited by Defendant.

Defendant claims he suffers restraints on his liberty. However, all conditions of bond are removed any time the prosecuting authority declines to prosecute. Any stigma he suffers from the arrest cannot be removed by the dismissal of these warrants because the arrest will always appear on Defendant's record.

Based on the foregoing reasons, the State respectfully requests the Court deny Defendant's request to dismiss Warrant No. 96W01014.

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	
Plaintiff	)	
vs.	)	WARRANT NOS. 96W97454 96W01014
CHRISTOPHER HARRIS,	)	
Defendant	)	

ORDER ON MOTION TO DISMISS WARRANTS
(Filed April 29, 1998)

The Defendant, through an attorney at law, filed a motion to dismiss these warrants. The Court held a hearing in which arguments were made. Subsequent thereto, additional briefs have been filed. The defendant is now Pro Se.

The State concedes that warrant number 96W97454 should be dismissed because there was never a judicial determination of probable cause. Therefore, warrant number 96W97454 is hereby DISMISSED.

The State objects to the dismissal of warrant number 96W01014. At a magistrate court hearing on July 15, 1996, the charge set forth in this warrant was bound over to DeKalb Superior Court, and the defendant posted bond. The District Attorney decided on January 8, 1998 that the charge in this warrant would not be presented to the Grand Jury. On the same date the defendant was notified that the case was closed and would "remain closed unless other evidence is forthcoming or further evaluation of the charges becomes necessary."

In the case of McCord v. Jones, 168 Ga. App. 891 (1983), a warrant was issued and "the district attorney decided not to seek an indictment and requested that the Clerk of the Superior Court place the warrant on the 'dead

docket' on the basis that there was insufficient evidence on which to prosecute the motion." The case does not state if a probable cause hearing had been held. In the case before the Court, the district attorney "closed" the case, instead of asking the clerk to place the case on the dead docket.

After discussing the effect of placing an indicted case on the dead docket the court in McCord v. Jones states: "In this case, notwithstanding the possible inappropriateness of placing a warrant (rather than an actual indictment) on the dead docket, we find a similar case [sic] of finality on termination of the prior criminal proceeding. Certainly, nothing prevents the district attorney from subsequently seeking an indictment and proceeding with a prosecution; likewise, nothing prevents the appellant from formally moving for dismissal of the charges. The present disposition simply does not constitute an abandonment and/or termination of the proceeding, absent a subsequent formal entry of dismissal of the criminal charges."

The district attorney still has the right to present the charge to the Grand Jury if additional evidence is uncovered or further evaluation warrants.

The motion to dismiss warrant number 96W01014 is hereby DENIED.

This the 28th day of April, 1998

/s/ Edward D. Wheeler
EDWARD D. WHEELER
Senior Judge

Copies to:

Jacqueline Hardy
Assistant District Attorney

Christopher T. Harris

(2) Supreme Court, U.S.

No. 01 361 AUG 22 2001

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CHRISTOPHER T. HARRIS,
Petitioner,

v.

CITY OF DORAVILLE, ET AL.,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
for the Eleventh Circuit

SUPPLEMENTAL APPENDICES:
Opinions, Orders and Judgments of the U.S. District Court
for Northern Georgia, Atlanta Division
and the U.S. Circuit Court of Appeals for the Eleventh Circuit
Granting and Affirming Summary Judgment to Respondents
and Dismissing the Civil Action

Christopher T. Harris
Petitioner Pro se
3321 Wheeler Drive
Doraville, Georgia, 30340
(770) 458-2754

46 pp

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER T. HARRIS

Plaintiff,

v.

CITY OF DORAVILLE, CITY OF DORAVILLE POLICE DEPARTMENT, CHIEF RON DAVIS, MAJOR CLIFFORD EDWARDS, LIEUTENANT ROBERT BROWN, DETECTIVE T.L. BAGGETT, SERGEANT H.M. PRITCHETT, OFFICER BETH STOCK, and UNKNOWN DORAVILLE POLICE OFFICERS

Defendants.

CIVIL ACTION NO.
1:98-CV-1326A-JEC

ORDER

This case is presently before the Court on defendants' Renewed Motion for Summary Judgment [145], defendants' Motion to Dismiss Notice of Appeal [156], plaintiff's Motion for Sanctions Hearing (158], plaintiff's Third Motion to Enlarge Time to File Response in Opposition to Defendants' Memorandum of Law in Support of Motion for Summary Judgment [164], plaintiff's Second Motion to Strike the Defense of the Alleged Bar by the Georgia Civil Statute of limitations [165], plaintiff's Motion for Reconsideration of the Court's Order of

[unnumbered page break]

April 12, 2000 Denying the Plaintiff's Motions for the Sanction of Default Judgment or, in the Alternative, Motion to Request Amendment of Order [166], and plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the plaintiff's Motions for Enlargement of Time to File Response to Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Request Amendment of Order [167]. The Court has

reviewed the record and the arguments of the parties and, for the reasons set forth below, concludes that defendants' Renewed Motion for Summary Judgment [145] should be **GRANTED**, defendants' Motion to Dismiss Notice of Appeal [156] should be **DENIED**, plaintiff's Motion for Sanctions Hearing [158] should be **DENIED**, plaintiff's Third Motion to Enlarge Time to File Response in Opposition to Defendants' Memorandum of Law in Support of Motion for Summary Judgment [164] should be **DENIED**, plaintiff's Second Motion to Strike the Defense of the Alleged Bar by the Georgia Civil Statute of Limitations [165] should be **DENIED**, plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions for the Sanction of Default Judgment or, in the Alternative, Motion to Request Amendment of Order [166] should be **DENIED**, and plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions

for Enlargement of Time to File Response to Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Request Amendment of Order [167] should be **DENIED**.

BACKGROUND

I. Procedural Background

This familiar case has been before the Court on numerous discovery motions. (*See* Order [161]; Order [146]; Order [139]; Order [75]; Order [42]; Order [10].) Indeed, in the Court's ultimate Order resolving discovery disputes issued on April 12, 2000, the Court noted that it had already granted plaintiff a 50-day extension to file his substantive response to defendants' motion for summary judgment and ordered plaintiff to file a substantive response within seven days of the Order. (Order [161] at 2-3.) Moreover, the Court warned, "**If plaintiff fails to respond within this time period with a substantive response. the Court will grant defendants' motion for summary judgment as unopposed.**" (*Id.* at 3 (emphasis in original).)

On April 21, 2000, the eve of plaintiff's deadline to file a substantive response to defendants' motion for summary judgment, plaintiff filed a document renewing his previously filed Response to Defendants' Statement of Undisputed Facts [121], Statement of Genuine Issues for Trial [121], and the

lengthy Affidavit of Christopher T. Harris [122]. In addition, on the same

date, plaintiff filed his Third Motion to enlarge Time to File Response in Opposition to Defendants' Motion for Summary Judgment [164] despite the Court's warning in its Order [161] that the seven-day deadline was a firm one and despite the Court's admonishment that it would not entertain any further extensions of time. Finally, plaintiff filed his Second Motion to Strike the Defense of Alleged Bar by the Georgia Civil Statute of Limitations [165] on the same day.[1]

Notably, aside from authority cited in his motion to strike defendants' statute of limitations defense, plaintiff cites no

[1] Plaintiff filed this second motion in contravention of the Court's clear directive issued in response to plaintiff's first motion to strike the statute of limitations defense. (*See* Order [139] at 16-17.) In the Order denying his first motion to strike this defense, the Court wrote,

> The Court is unwilling to determine the propriety of each of defendants' defenses in a piecemeal fashion. Plaintiff may assert his arguments as to why defendants' motion for summary judgment should not be granted in his response to defendants' motion for summary judgment. At that time, plaintiff may challenge defendants' statute of limitations defense. Accordingly, plaintiff's motion to strike defendants' statute of limitations defense is **DENIED**.

(*Id.*) This is a typical example of plaintiff's continued defiance of this Court's authority. (*See also* Order [146] at 4 (admonishing plaintiff that, if he was a litigant represented by counsel, the Court would have sanctioned plaintiff for the frivolity of his motions).)

case law and makes no legal argument in support of his federal or state claims. This is especially critical in the instant case where the individual municipal employees have asserted the defense of qualified immunity. Moreover, plaintiff has not explicated his municipal liability claims against either the City of Doraville or its Police Department. Instead, plaintiff has spent the bulk of his response making allegations without citations to the record or to evidence submitted in this case. Despite these obvious failures, the Court will address plaintiff's claims.

II. Factual Background

On May 1, 1996 at approximately 9:30 P.M., plaintiff noted that some of his weapons were missing from his home. (Stock Dep. at 9; Pl.'s dep. at 120; Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 1.) Fearing that his son, David Harris, had stolen the weapons, plaintiff called 911 and was transferred to the Doraville police department. (P1.'s Dep. at 119-20; Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 2.) According to plaintiff,

he told the dispatcher that his son was mentally disturbed and that he feared that his son could be suicidal. (Harris Dep. at 120.) Defendant Officer Bethann Stock was called to the scene to investigate the theft. (Stock Dep. at 9; pl.'s Resp. to Defs.' Stmt. of Mat. Facts

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[121] at ¶ 3.) As the alleged theft had already occurred, Officer Stock was the only officer dispatched to the scene. (Stock Dep. at 9.)

While waiting for the police to arrive, plaintiff walked toward a glass patio door where he saw his son standing outside the door on the patio. (Pl.'s Aff. [122] at ¶ 11.) When he encountered his son, the latter shot at plaintiff with a Rossi revolver. (*Id.*; Pl.'s Dep. at 117.) According to plaintiff, the bullet shattered when it struck the glass, and the fragments struck him above the heart; in addition, the bullet jacket struck plaintiff in the chest, causing a large wound over his heart, alongside many small wounds from the bullet fragments. (P1.'s Aff. [122] at ¶¶ 22-23.) Thereafter, plaintiff ran out of the side door to his house in an attempt to escape from his revolver-wielding son. David Harris fired two more shots at plaintiff as plaintiff escaped from the house, but those shots missed. (*Id.* at ¶ 23-24.)

As Officer Stock arrived at the scene, she heard several gunshots as she passed plaintiff's house in her patrol car. [Stock Dep. at 14-15.] In addition, Officer Stock heard screaming. (*Id.* at 16.) In her rear view mirror, Officer Stock saw two men running at her. (*Id.* at 21.) Officer Stock testified in her deposition that she did not stop her car at

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this point but, instead, drove down the road, turned her car around, and slowly headed back toward the two individuals. (*Id.* at 18.) She testified that David Harris stopped chasing his father and fired the revolver at her. (*Id.* at 24.) In his affidavit, plaintiff claims that Officer Stock accelerated quickly away from him and that he screamed at the fleeing police car while running after the car. {Pl.'s Aff. [122] at ¶¶ 27-28.) He also claims that as Officer Stock was driving away, David Harris shot at him two additional times, striking him in the back and in the elbow (*Id.* at ¶ 31.) Plaintiff also claims that as Officer Stock was accelerating away from the scene, she radioed into dispatch, informing the dispatcher that David Harris was firing at her. (*Id.* at ¶ 32.) In contrast to Stock's deposition testimony, plaintiff claims that David Harris did not fire shots. at Officer Stock. (*Id.* at ¶ 36.)

According to Officer Stock, she stopped her vehicle, opened her door, crouched behind the open door, and pointed her weapon at David Harris. (Stock Dep. at 26.) She explained that Harris turned and fled down the street back toward plaintiff's house, stopping only momentarily to fire yet another shot at her. *(Id.* at 25.) Officer Stack did not fire at the fleeing assailant because she felt that he was too far away for her to

get a clean shot and because she felt that it was too dangerous to fire into the neighborhood as neighbors had begun to gather outside of their homes. *(Id.* at 26.)

As David fled toward plaintiff's house, she turned her attention to plaintiff who had collapsed parallel to her police vehicle. (*Id.* at 23, 32-33; Pl.'s Aff. [122] at ¶ 36.) After advising the dispatcher of the shots that were fired and determining that plaintiff was not armed, she grabbed her first response kit and turned to help plaintiff who appeared to be seriously injured on his chest, his elbow,[2] and his leg.[3] (*Id.* at 28-29.) Eventually, two officers arrived at the scene to keep Officer Stock covered as she rendered first aid to plaintiff. (*Id.* at 34.) In addition, an ambulance arrived and transported plaintiff to the hospital. (Pl.'s Aff. [122] at ¶¶ 39-40.) Officer Stock left the scene and did not participate

[2] Officer Stock testified that she saw plaintiff's bone protruding from his elbow. (Stock Dep. at 34.)

[3] Plaintiff complains that Officer Stock stopped to render aid to him as opposed to following David in an attempt to apprehend him. In his deposition, he stated that Officer Stock should have shot back at his son and should have pursued David because plaintiff had told her that he was "alright." (Harris Dep. at 114-15.) Indeed, plaintiff complains that Officer Stock should have apprehended David before he could get "in the house where he could have gotten more ammunition, more guns, reloaded, got out, and terrorized the neighborhood." (*Id.* at 115-16.)

in any further events related to plaintiff. (Stock Dep. at 36, 49.)

After plaintiff was taken away, Doraville police officers arrived at plaintiff's house, established a perimeter around the crime scene, and began to search for David Harris, as Officer Stock had not captured him. (Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶¶ 8-9; Defs.' Stmt. of Mat Facts [110] at ¶¶ 8-9.) At approximately 9:58 P.M., the police officers, fearing the

David Harris could be in the house or return to the house to restock his ammunition or weapons supply, searched the house for weapons and ammunition. (Defs.' Stmt. of Mat. Facts [110] at Pritchett Aff. at ¶ 5, Ex. A ("Pritchett Supplemental Report"); Baggett Aff. at Ex. A ("May 9, 1996 Search warrant Application") at 2.) Although the officers did not locate David Harris at this time,[4] they seized several weapons and ammunition from plaintiff's house. (*Id.*) Upon plaintiff's return from the hospital, the police officers returned all weapons and ammunition to plaintiff. (Pl.'s Dep. at 131.)

While searching for weapons in plaintiff's bedroom, defendant Sergeant H.M. Pritchett noticed a black, hard plastic

[4] David Harris was captured near Pensacola in Escambia County, Florida and was extradited to Decatur, Georgia on May 19, 1996. (Baggett dep. at 19.)

case, approximately the size of a hand gun case. (Pritchett Supplemental Report at 1.) The case was lodged between the wall and a chest of drawers. (*Id.*; Pl.'s Dep. at 58.) Sergeant Pritchett checked the case for weapons. At that time, he noticed, sitting next to the black case, a framed picture of an eleven or twelve-year-old girl jumping rope naked.[5] (Pritchett supplemental Report at 1; Pl.'s Dep. at 58; *see also* Pl.'s Dep. at Exs. 1-2 (actual frame and picture found by Pritchett); May 9, 1996 Search Warrant Application at 2.) Alarmed, Sergeant Pritchett called this photograph to the attention of defendant Lieutenant Robert Brown.[6] (Pritchett

[5] Plaintiff explains that this picture was cut out from a nudist magazine and that the reverse side of the picture depicts a nudist mother with her toddler. (P1.'s Resp. to Defs.' Stmt. of Mat. Facts [1213 at ¶ 12; see *also* Pl.'s Dep. at Exs. 1-2.) plaintiff admits that this picture was placed in a frame and was located behind his dresser at the time of the May 1, 1996 search. (Pl.'s Dep. at 58.)

[6] Aside from Lieutenant Brown and sergeant pritchett, no other named defendant participated in the actual search of plaintiff's house on May 1, 1996. Indeed, the undisputed evidence presented by defendants demonstrates that Officer Stock left the scene of the shooting after the ambulance arrived. (Stock Dep. at 36, 49.) In addition defendants police Chief Ronald Davis, Major Clifford Edwards, and Detective H.L. Baggett were at the scene of the shooting but did not actually enter plaintiff's house to search. (Dets.' Stmt. of Mat. Facts (110] at Edwards Aff. at ¶ 4, Ronald Davis Aff. at ¶ 4; Baggett flep. at 7-8.) police Chief Davis and Major Edwards admit that they were at the crime scene acting only in a supervisory capacity. (Defs.' Stmt. of Mat. Facts (110] at Edwards

supplemental Report at 1; Pritchett Aff. at ¶ 6.) After noting the picture, Sergeant Pritchett replaced the picture in the spot from which it was found and continued searching for weapons. (*Id.*)

After the May 1, 1996 episode, Detective Baggett began an investigation into the shooting. (Baggett Aff. at ¶ 4; May 9, 1996 Search Warrant Application at 1.) On May 3, 1996, Detective Baggett received a call from Sondra London, a woman who lived with plaintiff for a number of years, who told him that plaintiff was in possession of a videotape depicting "very young girls engaged in acts of a sexual nature."[7] (*Id.* at 2; Baggett Dep. at 32-33, 34.) In addition, on May 6, 1996, a young girl and her father came to the Doraville police station to talk to Detective Baggett. (May 9, 1996 Search Warrant Application at 2.) The young girl revealed that plaintiff could be found around neighborhood girls "a lot," particularly girls between the ages of 11 and 14. (*Id.*)

Aff. at ¶ 4, Ronald Davis Aft. at ¶ 4.)

[7] Ms. London also explained to Detective Baggett that she told plaintiff to get rid of the tape but that plaintiff refused, claiming that he "couldn't get in trouble for just that." (May 9, 1996 Search Warrant Application at 2.)

Armed with this information, Detective Baggett interviewed six young girls and their guardians from the neighborhood. One of these children, a twelve-year-old girl, explained that plaintiff had taken and retained a video of her and another twelve-year-old girl "acting in a homosexual manner towards one another." (May 9, 1996 Search Warrant Application at 1-2.) Moreover, the same young girl stated that there was another video where a twelve-year-old girl exposed her breasts to the camera while plaintiff was videotaping and that plaintiff retained a copy of this videotape. (*Id.* at 2.) All six reported that they knew that plaintiff had a picture of one of the twelve-year-old girls "in the nude." (*Id* at 2.)

In addition, one of the girls explained that plaintiff had taken a picture of one of twelve-year-old girls in a bikini and using his computer, altered the photograph by removing the bikini and drawing breasts and pubic hair onto the photograph. (*Id.*) Another girl turned over three letters written by plaintiff to another girl. In one of these letters, plaintiff referred to a twelve-year-old girl as "sexy." (*Id.*; *see also* Pl.'s Dep. at Ex. 38.) Finally, the girls revealed that they knew that plaintiff did not wear any underwear and that, on

separate occasions, plaintiff had exposed his "genitals" to the girls.[8] (*Id.*)

On May 9, 1996, Detective pritchett wrote a search warrant application for plaintiff's home. In this application, Detective Baggett documented his investigation and included the information that the witnesses had provided him. (May 9, 1996 Search Warrant Application at 2.) In addition, Detective Baggett described the photograph that Pritchett had discovered on May 1, 1996 in the search for David Harris and weapons at plaintiff's house. (*Id.*) In the search warrant, Detective Baggett requested to search for "video tapes containing child pornography (either commercial or home-made) depicting juvenile

[8] In plaintiff's response to defendants' statement of undisputed facts, plaintiff agrees that Detective Baggett documented this evidence in his application for a search warrant but disagrees as to the veracity of this information, claiming that Detective Baggett did not really believe that "there was any real support for any such belief [that plaintiff had child pornography in his home]." (Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [122] at ¶ 24.) Indeed, plaintiff claims that Detective Baggett was being "deliberately deceptive" in his application for a search warrant. (*Id.*) Moreover, plaintiff claims that none of the witnesses interviewed by Detective Baggett actually "said or indicated anything against plaintiff." (*Id.* at ¶ 25.) Although plaintiff makes these blustery allegations, he offers no evidence from the record to support his contentions that Detective Baggett was deliberately lying in his affidavit in support of his search warrant application. Instead, he argues that it is defendants' burden to bring forth evidence of a "disinterested witness" to support Detective Baggett's search warrant application.

females performing various sexually explicit acts, video camera(s), computer components including disks, hard drives, monitors, and printers used to alter photos depicting juveniles in the nude[,] photographs of juvenile females showing participants in the nude, and computer altered or enhanced photos depicting juvenile females in the nude." (*Id.* at 3.) In this application, Detective Baggett stated that these items are in violation of O.C.G.A. § 16-12-100 entitled "sexually explicit conduct by minor for use in a vi[s]ual medium." (*Id.* at 3.) A Doraville City Judge issued the warrant after making a determination that there existed probable cause to search the residence. (*Id.*)

On May 9, 1996 at approximately 5:30 P.M., Detective Baggett, Lieutenant Brown, and Major Edwards, along with three or four other officers, were waiting at plaintiff's house for plaintiff as he returned from work. (Pl.'s Dep. at 148-49.)

The officers searched plaintiff's car and home, seizing a number of

items including "photographs, letters, a zodiac printout, files, college term papers, poetry, computer equipment and computer files, videotapes, a camcorder, books, and magazines." (Baggett Aff. at ¶ 6; Baggett Dep. at 21-22.) In addition, Detective Baggett found "a picture of a [juvenile]

female with her hand placed inside a pair of bikini shorts, app[arently] masturbating." (Baggett Dep. at 22.)

Based on the evidence discovered in the search and the information documented in his application for a search warrant, Detective Baggett applied for an arrest warrant, explaining that plaintiff "did photograph a 12 year old female in various sexual poses while in a bikini . . . [and] alterations made through use of a computer." (Baggett Aff. at Ex. C; Baggett Dep. at 21-22.) The arrest warrant charged plaintiff with misdemeanor "sexually explicit conduct by a minor for use in visual medium" in violation of O.C.G.A. § 16-12-100. (Baggett Aff. at Ex. C.)

While the search was taking place, an unnamed officer instructed plaintiff to sit in the police car during the search, and, according to plaintiff, within a few minutes, the officer got into the car and drove plaintiff to the police station. (Pl.'s Dep. at 152.) Plaintiff was arrested, searched, and put in a holding cell. (*Id.* at 153.) He was granted a $10,000 bond and finally bonded out of jail on May 16, 1996 by a group of plaintiff's co-employees. (Pl.'s Aff. [122] at ¶¶ 73, 78.)

When plaintiff returned to his home on May 16, 1996, he noted that his police scanner was still in its place on his

dining room table. (Pl.'s Aff. [122] at ¶ 79.) Plaintiff spent the night at a colleague's house on May 16 and returned the next day to his home. (*Id.*) When plaintiff *entered* his house, he discovered that the house had been broken into and his police scanner had disappeared along with other files and boxes.(*Id.* at ¶ 80.) In addition, plaintiff's bedroom door had been forced open and broken by the intruders. (*Id.*) Plaintiff did not report the burglary to the police until June 28, 1996, purportedly because he was afraid of the Doraville police. (Pl.'s Dep. at 173.)

During the search on May 9, 1996, the officers had uncovered a video tape that they later discovered contained a young girl dancing.[9] During this "sexually suggestive" dance, the young girl raised her shirt, exposing her

breasts.[10] (Pl.'s

[9] Plaintiff explained in his deposition that while he was videotaping the dancer the young girl motioned to him that her brother, a juvenile who was under the covers of his bed with his juvenile girlfriend, was being "jerked off" by his girlfriend. (P1.'s Dep. at 192, 194-95.) Indeed, at the end of the video, the young girl came close to the camera and whispered to plaintiff that "she . . . is jerking him off." plaintiff responded, "And now the world will know." (*Id.* at 198.)

[10] Although plaintiff does not dispute that this dance was sexually suggestive, (pl.'s Dep. at 200), and the fact that he should not have videoed the twelve-year-old girl raising her shirt to expose her breasts, (id. at 201) plaintiff contends that this twelve-year-old girl was simply dancing in the style made popular on television

Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 34; Defs.' Stmt. of Mat. Facts [110] at ¶ 34.) Based on this video tape and other information gathered during his investigation, Detective Baggett applied for another arrest warrant on June 17, 1996.[11] (Baggett Aff. at Ex. D.) In this arrest warrant, Detective Baggett charged plaintiff with felony sexual exploitation of children based on the possession of "a video tape showing juvenile female exposing breasts and acting in a sexually explicit manner in violation of OCCA § 16-12-100." (*Id.*) On the same day, Detective Baggett and another officer arrived at plaintiff's house and arrested him. (Baggett Dep. at 43.)

Plaintiff remained in jail from June 17 until June 20. (Pl.'s Dep. at 182.) On that day, he was taken to DeKalb Magistrate Court, where the magistrate judge set bond at

stations like MTV and similar to a dance demonstrated by Demi Moore on 20/20 in an interview with Barbara ~alters. (Pl.'s Resp. to Defs.' stmt. of Mat. Facts [121] at ¶ 34.)

[11] Between May 19, 1996 and June 1996, Detective Baggett met with plaintiff's son to discuss, *inter alia,* plaintiff's alleged past history of child exploitation. (Baggett Dep. at 19, 37.) David Harris explained to Detective Baggett that, when the former was approximately five-years-old, plaintiff fondled a young girl in front of him, encouraging David to participate. (*Id.* at 20.) In addition, David explained "that he knew about [plaintiff's] propensity *for* being attracted to female children" and that due to plaintiff's "association with several children in a former neighborhood," David felt that plaintiff "might be engaging in those activities again." (*Id.*)

$7,500. (*Id.* at 184-85.) On July 15, 1996, plaintiff appeared for a probable

cause hearing, and after hearing testimony from Detective Baggett, the magistrate judge found that there was sufficient probable cause to bind the case over to DeKalb Superior Court. (Pl.'s Aff. [122] at ¶¶ 99, 102-03.)

On February 5, 1998, plaintiff, through counsel, filed a motion to dismiss the two arrest warrants. (*Id.* at ¶ 107.) On April 28, 1998, Judge Edward S. Wheeler dismissed the misdemeanor arrest warrant but refused to dismiss the felony arrest warrant. (*Id.*) Plaintiff has attempted to appeal the judge's determination through the Georgia courts and filed in the United States Supreme Court a petition for writ of certiorari to the Georgia Court of Appeals. (*Id.* at ¶ 111.) This petition was denied on October 4, 1999. *See Harris v. Georgia*, 120 S. Ct. 177 (1999).

On May 8, 1998, plaintiff, proceeding pro se, filed suit against the City of Doraville, Georgia, the Doraville police Department, Chief of police Ron Davis, Major Clifford Edwards, Lieutenant Robert Brown, Detective T.L. Baggett, Sergeant H. M. Pritchett, Officer Beth Stock, and Unknown Doraville Police Officers. (Compl. [1] at 1.) Plaintiff alleges seven 42 U.S.C.. § 1983 counts against the individual officers and the municipalities. In his first two counts, plaintiff claims that

defendants violated his Fourth Amendment right to be free from unreasonable searches and seizures when they conducted the May 1, 1996 search and seized plaintiff's firearms and ammunition. (*Id.* at ¶¶ 61-62.) In Counts Three through Five, plaintiff asserts that defendants violated his Fourth Amendment rights on May 9, 1996 by arresting him without probable cause, by searching his home without probable cause, or, in the alternative, by exceeding the scope of the search warrant in seizing property from his house. (*Id.* at ¶¶ 63-65.) In Count Six, plaintiff states that defendants violated his Fourth Amendment rights when they allegedly broke into plaintiff's home on May 17, 1996 and stole his police scanner and other files. (*Id.* at ¶ 66.) Finally, plaintiff maintains that defendants violated his Fourth Amendment rights when they arrested him on June 17, 1996 without probable cause. (*Id.* at ¶ 67.)

Furthermore, plaintiff's complaint contains seven additional counts alleging similar violations of the Georgia Constitution's search and seizure clause. (*Id.* at ¶¶ 77-83.) In addition, plaintiff maintains state tort law claims of false and malicious arrest, false imprisonment, and intentional infliction of emotional distress. (*Id.* at ¶¶ 88-105.)

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DISCUSSION

I. Summary Judgment Standard

Summary judgment is not properly viewed as a device that the trial court may, in its discretion, implement in lieu of a trial on the merits. Instead, Rule 56 of the Federal Rules of Civil procedure *mandates* the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of every element essential to that party's case on which that party will bear the burden of proof at trial. *Celotex Corp. V. Gatrett*, 477 U.S. 317, 322 (1986). In such a situation, there can be no genuine issue as to any material fact, as a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. *Id.* at 322-23.

The movant bears the initial responsibility of asserting the basis for his motion. *Id.* at 323; *Apcoa, Inc. V. Fidelity Nat'l Bank*, 906 F.2d 610, 611 (11th Cir. 1990). The movant is not required to negate his opponent's claim, however. The movant may discharge his. burden by merely "'showing' –that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325. After the movant has carried his burden, the nonmoving party is then required to "go beyond the pleadings"

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and present competent evidence[12] designating "'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324 (quoting FED. R. CIV. P. 56(e)). While the court is to view all evidence and factual inferences in a light most favorable to the nonmoving party, *Samples v. City of Atlanta*, 846 F.2d 1328, 1330 (11th Cir. 1988), "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson V. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

A fact is material when it is identified as such by the controlling substantive law. *Id.* at 248. An issue is genuine when the evidence is such that a reasonable jury could return a verdict for the nonmovant. *Id.* at 249-50. The nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts . . . where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Electric Indus. Co. v. Zenith*

Radio Corp., 475 U.S.

[12] The nonmoving party may meet its burden through affidavit and deposition testimony, answers to interrogatories, and the like. *Celotex*, 477 U.S. at 324.

574, 586-87 (1986) (citations omitted). An issue is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is not significantly probative." *Anderson*, 477 U.S. at 249-50. Thus, to survive a motion for summary judgment, the nonmoving party must come forward with specific evidence of every element material to that party's case so as to create a genuine issue for trial.

II. Federal Constitutional Claims

A. *Introduction*

Plaintiff has alleged violations of his Fourth Amendment right to be free from unreasonable search and seizure. Plaintiff alleges that his rights were violated on four different dates. First, plaintiff contends that the search of his home and subsequent seizure of his weapons an May 1, 1996 were not justified by an exception to the Fourth Amendment's warrant requirement. Second, plaintiff claims that the search warrant issued on May 9, 1996 was not supported by probable cause, or, in the alternative, the officers exceeded the scope of the warrant by seizing materials not included within the warrant's scope. Third, plaintiff maintains that his May 9, 1996 arrest was not supported by probable cause and, as such, violated the Fourth Amendment. In addition, plaintiff claims that police officers illegally searched and seized items from

his house on May 17, 1996. Finally, plaintiff asserts that his June 17, 1996 arrest was likewise not supported by probable cause.

The individual defendants[13] contend, however, that they did not violate the Fourth Amendment. (Defs.' Mem. in Supp. of Mot. for Summ. J. [110] at 9-19.) Moreover, they argue that even if the Court finds that they violated plaintiff's constitutional rights, they are entitled to qualified immunity as a matter of law. (*Id.* at 20-22.) In addition, defendants claim that plaintiff's claims stemming from the May 1, 1996 searches are barred by the two-year statute of limitations applicable to § 1983 claims in Georgia. (*Id.* at 8-9.) Finally, both the Doraville Police Department[14] and the City of

[12] Inasmuch as plaintiff has brought these claims against the individual defendants in their official capacity, the official capacity claims must be **DISMISSED.** A claim against a public official in his official capacity equates to a claim against the agency for which the official works. *See Kentucky V. Graham*, 473 U.S. 159, 165-66 (1985). Accordingly, these official capacity claims are folded into the claims against the City of Doraville discussed *infra.* Thus, the discussion of the claims against the individual defendants relates to the claims against them in their individual capacities.

[14] The Doraville Police Department correctly argues that it is not a proper party to this litigation, as a suit against the City's Police Department is the same as a suit against the City. See *Wayne V. Jarvis*, 197 F.3d 1098, 1105 (11th Cir. 1999) (holding that district court should have dismissed suit against DeKalb County Sheriff's Department

Doraville argue that plaintiff has failed to establish municipal liability. (*Id.* at 22-23.) The Court will first address the claims against the individual defendants and then delve into plaintiff's municipal liability claims.

B. *Claims Against the Individual* Defendants

1. Qualified Immunity

"Qualified immunity protects government officials performing discretionary functions from civil trials (and the other burdens of litigation, including discovery) and from liability if their conduct violates no 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Lassiter V. Alabama A & M Univ.*, 28 F.3d 1146, 1149 (11th Cir. 1994) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). "That qualified immunity protects government actors is the usual rule; only in exceptional cases will government actors have no shield against claims made

because claims against Sheriff's Department were redundant where plaintiff also sued DeKalb County); *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992) ("Sheriff's departments and police departments are not usually considered legal entities subject to suit.") As plaintiff has named both the City of Doraville and the City of Doraville Police Department as defendants, the suit against the Police Department is redundant. Accordingly, the Court **GRANTS** the City of Doraville Police Department's motion for summary judgment, and the Court will treat plaintiff's municipal liability claims as being brought against the City.

against them in their individual capacities." *Id.* (citations and emphasis omitted). Accordingly, there is a two-prong test to determine if qualified immunity applies: (1) were defendants performing a discretionary function

when they were performing the search at issue in this case and (2) did defendants' actions violate "clearly established law"?

As to the first inquiry, plaintiff fails to address whether the defendants were performing discretionary functions when they performed the searches, seizures, and arrests in question in this case. Hence, the Court concludes that there is no dispute that the individual defendants in this case were performing a discretionary function when they executed the searches, seizures, and arrests at issue. Since "(t]here is no doubt in the present case that the officers were acting within their discretionary authority, ... the sole issue is whether their actions violated clearly established law." *Hartsfield v. Lamacks*, 50 F.3d 950, 953 (11th Cir. 1995). The burden is on plaintiff to show that the defendants violated clearly established law. *Id.* Plaintiff cannot discharge this burden "simply by referring to general rules or abstract rights" but, rather, must point to clearly established law. *Id.* at 954.

"When considering whether the law applicable to certain facts is clearly established, the facts of the cases relied

upon as precedent are important. The facts need not be the same as the facts of the immediate case. But they do need to be materially similar." *Adams v. St. Lucie Co. Sheriff's Dept.*, 962 F.2d 1563, 1575 (11th Cir. 1992) (Edmonson, J., dissenting), *approved en banc*, 998 F.2d 923 (11th Cir. 1993). To be clearly established, however, "does not mean that a court must have previously found the very action in question to be unlawful, but it does mean that 'in light of preexisting law the unlawfulness must be apparent.'" *Jordan v. Doe*, 38 F.3d 1559, 1566 (11th Cir. 1994) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). The Eleventh Circuit has explained, "As we have stated often, '"[p]ublic officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases."'" *Jones v. City of Dothan*, 121 F.3d 1456, 1460 (11th Cir. 1997) (citing *Jenkins V. Talladega City Bd. of Educ.*, 115 F.3d 821, 827 (11th Cir. 1997) (en banc) (quoting *Adams*, 962 F.2d at 1575)).

The qualified immunity question presented in this case is whether Fourth Amendment law "clearly established" that the searches, seizures, and arrests in this case were unconstitutional. The crucial date for determining the state of the law is the date that the events took place, in May and June of 1996. For law to be clearly established, it must have

been in effect at the time of the alleged unconstitutional conduct, "In this circuit, the law can be 'clearly established' for qualified immunity purposes only by decisions of the U.S. Supreme Court, Eleventh Circuit Court of Appeals, or the highest court of the state where the case arose." *Jenkins,* 115 F.3d at 827 n.4.

2. May 1, 1996 Search and Seizures

As an initial matter, defendants claim that plaintiff's claims stemming from the May 1, 1996 search and seizures are time barred, as plaintiff failed to file suit within two years of the search and seizures. Section 1983 claims "are governed by the forum state's residual personal injury statute of limitations." *Burton v. City of Belle Glade,* 178 F.3d 1175, 1188 (11th Cir. 1999). In Georgia, the statute of limitations for personal injury is two years. *See* O.C.G.A. § 9-3-33. Accordingly, "the Georgia two-year personal injury limitations period applies to § 1983 actions in Georgia district court." *Kelly v. Serna,* 87 F.3d 1235, 1238 (11th Cir. 1996).

Plaintiff filed his original lawsuits in federal district court on May 8, 1998. (Compl. [1] at 1.) Accordingly, to avoid the statute of limitations bar, plaintiff's cause of action must have accrued on or after May 8, 1996. See *Rozar V. Mullins,* 85 F.3d 556, 561 (11th Cir. 1996). "The general

federal rule is that 'the statute [of limitations] does not begin to run until the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.'" *Id.* (quoting *Mullinax v. McElhenney,* 817 F.2d 711, 716 (11th Cir. 1987)). "Plaintiffs must know or have reason to know that they were injured, and must be aware or should be aware of who inflicted the injury." *Id.*

In the instant case, plaintiff should have known that his rights were violated at the time the search and seizures took place on May 1, 1996. Indeed, as evidenced by plaintiff's testimony during his deposition and the fact that the police returned his weapons and ammunition upon his release from the hospital on May 2, 1996, it is clear that plaintiff knew that the officers searched his home and seized weapons and ammunition on May 1, 1996. (Pl.'s Dep. at 131.) Thus, plaintiff's Fourth Amendment search and seizure claims stemming from the May 1, 1996 search of plaintiff's home accrued the moment the allegedly illegal search and seizures occurred.

As all three of these § 1983 claims accrued on May 1, 1996, in order to avoid the statute of limitations bar, plaintiff must have brought the lawsuit within two years, or by May 1, 1996 [sic, should be May 2, 1998]. Plaintiff

filed this lawsuit on May 8, 1996, [sic, should be 1998] however,

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one week after the statute of limitations had elapsed. Under these circumstances, plaintiff's claims of illegal search and seizure arising out of the May 1, 1996 search are untimely.

In order to avoid the harsh consequences of the statute of limitations, plaintiff argues, inter alia,[15] that the statute of limitations should be tolled because the defendant officers were engaged in a conspiracy to violate plaintiff's constitutional rights that began with the May 1, 1996 search and continued, at the earliest,[16] on May 16, 1996 when he was

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[15] Plaintiff also argues that defendants, by failing to file a motion to dismiss based on the statute of limitations grounds, waived the statute of limitations defense and, as such, may not assert such a defense at the summary judgment stage. (Pl.'s Second Mot. to Strike Defs.' Stat. of Lim. Defense [165] at 3-7.) This contention is patently frivolous and is not supported by case law. Defendants asserted the defense that plaintiff's claims were barred by the applicable statute of limitations in their answer, (see Defs.' Ans. [3] at 4), and had no duty to assert this defense in a motion to dismiss as opposed to asserting this defense in the pending motion for summary judgment.

[16] Plaintiff contends that the statute of limitations should be tolled until the present time, as he contends that the City of Doraville and its police officers continue to harass him to this day. (Pl.'s Second Mot. to Strike Defs.' Stat. of Lim. Defense [165] at 13.) Indeed, plaintiff currently implicates others in the conspiracy to deprive him of his constitutional rights, including DeKalb County Superior Court Judge James H. weeks, who plaintiff alleges "tried to coerce plaintiff to sign a waiver of his constitutional rights . . . by and through the brutal, mutilating beatings of and acts of mental cruelty against the plaintiff's son in the DeKalb County Jail and in the judge's chambers and his courtroom." (*Id.* at 15.)

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released from jail on bond. (Pl.'s Second Mot. to Strike Defs.' Stat. of Lim. Defense [165] at 10, 13.) To support this contention, plaintiff cites to *Young v. State*, 205 Ga. App. 357, 422 s.E.2d 244 (1992). *Young,* however, dealt with the criminal statute of limitations for conspiracy under O.C.G.A. § 16-10-21 and does not deal with the continuing tort theory applicable to Georgia civil cases. *See id.* at 363, 250.

As discussed *supra,* the instant case is controlled by Georgia law regarding the statute of limitations. "Georgia recognizes the theory of continuing tort, which applies 'where any negligent or tortious act is of a

continuing nature and produces injury in varying degrees over a period of time.'" *Mears v. Gulfstream Aerospace Corp.*, 225 Ga. App. 636, 640 484 S.E.2d 659, 664 (1997) (quoting *Everhart v. Rich's, Inc.*, 229 Ga. 798, 802, 194 s.E.2d 425 (1972)). A continuing tort is one that is inflicted over a period time. *See Ritterman v. Emory Univ.*, 175 Ca. App. 348, 333 S.E.2d 378, 379 (1985). The Eleventh Circuit has recently given two examples of a continuing tort under Georgia law:

> The discovery rule has been applied, for example, in a case involving plaintiffs who were injured by six years of exposure to toxic chemicals that the defendant sprayed in their house. *See Andel v. Getz Servs., Inc.*, 191 Ga. App. 653, 399 S.E.2d 226, 228 (1990). In another case, the court concluded that

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> the discovery rule applied where the plaintiff suffered from lead poisoning caused by fumes he inhaled during the five years that he worked in the defendant's battery treatment plant. *See* [*King v. Seitzingers, Inc.*, 160 Ca. App. 318, 287 S.E.2d 252, 254-55 (198l)].

M.H.D. v. Westminster Schools, 172 F.3d 797, 805 (11th Cir. 1999). Yet, in that same case, the panel refused to apply the continuing tort theory to a plaintiff who had been sexually abused four times within a few months. *Id*

In the instant case, the Court finds that Georgia's continuing tort theory does not apply to plaintiff's claims stemming from the May 1, 1996 search and seizures. As discussed *supra*, the illegal search and seizure claims accrued on May 1, 1996, as these were distinct constitutional violations that were completed on that date. Indeed, the Georgia courts are clear that the continuing tort theory does not apply to torts that constitute "a completed wrong." *See Adams v. Emory Univ. Clinic*, 179 Ga. App. 620, 622, 347 S.E.2d 670, 672 (1986). *See also Lipsteuer v. CSX Transp. Inc.*, 236 Ga. App. 806, 809, 513 s.E.2d 532, 535 (1999) and *Hoffman v. Insurance Co. of North Amer.*, 241 Ga. 328, 330, 245 S.E.2d 287 (1978). In this case, it is clear that the alleged illegal search and seizures were completed at the time that the officers engaged in the allegedly unconstitutional behavior.

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Accordingly, the Court finds that these torts are not similar to those torts that

Georgia courts have found to be "continuing." Accordingly, plaintiff's claims against all individual defendants stemming from the May 1, 1996 search and seizures of plaintiff's weapons are barred by the applicable two-year statute of limitations.

Moreover, plaintiff has not presented sufficient evidence to demonstrate that the officers violated his Fourth Amendment rights when they conducted a search of his home and seized his weapons on May 1, 1996. Although "'[i]t is "a basic principle of Fourth Amendment Law" that searches and seizures inside a home without a warrant are presumptively unreasonable,' ... '[a] warrantless search is allowed, however, where both probable cause and exigent circumstances exist.'" *United States v. Reid*, 69 F.3d 1109, 1113 (11th Cir 1995) (quoting *Payton v. New York*, 445 U.S. 573, 586 (1980) and *United States v. Tobin*, 923 F.2d 1506, 1510 (11th Cir. 1991) (en banc)). "Probable cause to search exists where the facts lead a reasonably cautious person to believe that the 'search will uncover evidence of a crime.'" *United States v. Ramos*, 933 F.2d 968, 972 (11th Cir. 1991) (quoting *United States V. Burgos*, 720 F.2d 1520 (11th Cir. 1983)). "Exigent circumstances exist 'when the inevitable delay incident to obtaining a warrant must

give way to an urgent need for immediate action." *Id.* (quoting *United States v. Satterfield*, 743 F.2d 827, 844 11th Cir. 1984)).

In the instant case, because the individual officers are asserting the defense of qualified immunity, the officers "need not have actual probable cause but only 'arguable probable cause.'" *Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997). Arguable probable cause exists when "an *officer* reasonably could have believed that probable cause existed, in light of the information the officer possessed." *Id.* "Thus, the qualified immunity standard is broad enough to cover some 'mistaken judgment,' and it shields from liability 'all but the plainly incompetent or those who knowingly violate the law.'" *Id.* (quoting *Malley v. Briggs*, 475 U.S. 335, 343 (1986)).

In the instant case, the undisputed facts demonstrate that the officers had actual probable cause to believe that the fugitive David Harris may have returned to plaintiff's home and that weapons could be found at plaintiff's residence. Furthermore, the police, in searching plaintiff's home and seizing his weapons and ammunition, acted under several of the recognized situations in which exigent circumstances exists.

Turning first to the issue of probable cause, Officer Stock arrived at the scene of what she believed to be burglary, as

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plaintiff, at approximately 9:30 P.M., called into the Doraville Police Department and reported that his son "had taken one or more of my guns." (Pl.'s Aff. [122] at ¶ 21.) According to plaintiff, he also explained to the dispatcher that his son was "mentally disturbed." (*Id.*) Officer Stock arrived at the scene and immediately heard several gunshots and saw two people running towards her car in her rear view mirror. (Stock Dep. at 14-15, 21.) As she turned her car around, she heard additional shots. (*Id.*) Moreover, plaintiff averred in his *first* affidavit that David Harris had fired a weapon at least twice at plaintiff in the direction of Officer Stock's police car.[17] (Pl.'s Aff. [122] at ¶ 31.) After Officer Stock screamed at David Harris to drop the gun, he turned and ran back in the direction of plaintiff's house. (Stock dep. at 32-33; pl.'s Aff. [122] at ¶ 36.)

[17] In his deposition and in his affidavit, plaintiff vehemently contests Officer Stock's testimony that David Harris fired shots at her. Rather, plaintiff claims that as he was running after Officer Stock's vehicle, his son fired at him twice, hitting him in the back and in the elbow. (Pl.'s dep. at 113; Pl.'s Aff. [122] at ¶¶ 29-31, 36.) Regardless of whether these two shots can be construed as being fired at the officer or at plaintiff, it is clear that David Harris was armed and dangerous, as he was clearly willing to fire shots in a residential neighborhood.

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At approximately 9:58 P.M., 28 minutes after plaintiff's call to the Doraville Police Department, Sergeant Pritchett and other officers arrived at the scene, established a perimeter around the neighborhood, and performed a search of plaintiff's house.[19] (Pritchett Supplemental Report at 1.) In his supplemental report, Sergeant Pritchett indicated that the search was initiated in order to locate David Harris and weapons. (*Id.*)

Based on the totality of the circumstances, it is clear that the responding officers had actual probable cause to search plaintiff's house for David Harris or for weapons with which David Harris could use to harm the officers or other members of the public. That is the officers had reason to believe that David Harris, an individual who had recently committed the crime of aggravated assault on his father, had immediate access to the house and the cache of weapons within the house. Moreover, plaintiff and Officer Stock saw David Harris run toward the house in his attempt to flee from Officer Stock. Although plaintiff contends in his response to

[18] The evidence is undisputed that Officer Stock left the scene and did not take part

in the search of plaintiff's house on May 1, 1996. (Stock Dep. at 36, 49; Pl.'s dep. at 127.) Accordingly, plaintiff's claims against Officer stock based on the search and seizures of May 1, 1996 are **DISMISSED**

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defendants' statement of undisputed facts that various police radio transmissions indicated that plaintiff had been spotted at a Montessori school near plaintiff's home,[19] it was reasonable for the officers to believe that David Harris could have returned to plaintiff's home with his weapons. During the cover of night, it was certainly reasonable to believe that the fugitive could have slipped back into his father's home either to procure addition [sic] weapons or ammunition or to find sanctuary.

Likewise, it was also reasonable for the police officers to secure any weapons and ammunition found in the house in order to protect themselves during the pendency of the search for the fugitive. Plaintiff admits that he had many guns in his home at the time of this incident. (Pl.'s Dep. at 117-18.) Indeed, plaintiff informed the dispatcher that his mentally disturbed son had taken "one or *more of my guns,*" indicating to the officers that there were more weapons in the house with which David Harris could utilize if he secreted himself in the house or if he returned to the house at a later time. Accordingly, the officers had a reason to believe that other weapons could be found at plaintiff's house and those weapons

[19] (See Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 11.)

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could be utilized by David Harris if he returned to the residence at a later time that evening

Turning to the question of exigency, the Court likewise concludes that the officers were faced with exigent circumstances sufficient to justify a warrantless search of plaintiff's home. As the former Fifth Circuit has explained, "The exigent circumstances doctrine recognizes several common situations where the time consuming resort to a neutral magistrate for an arrest or search warrant is unnecessary, for example: hot pursuit, ... fleeing suspect, ... danger to arresting officers or the public from the suspect...." *United States v. Kreimes,* 649 F.2d 1185, 1192 (5th Cir. Unit B 1981) (citations omitted). Moreover, the Eleventh Circuit has identified several factors which indicate exigent circumstances, including:

> (1) the gravity or violent nature of the offense with which the suspect is to be charged; (2) a reasonable belief the suspect is armed; (3) probable cause to believe the suspect committed the crime; (4) strong reason to believe that the suspect is in the premises being entered; (5) a likelihood that delay could cause the escape of the suspect or the destruction of essential evidence, or jeopardize the safety of officers or the public.

United States v. Standridge, 810 F.2d 1034, 1037 (11th Cir. 1987).

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In the instant case, these five circumstances are easily met. First, David Harris had just completed an aggravated assault on his father on the street of a residential neighborhood by firing a revolver at least five times. Second, both plaintiff and Officer Stock witnessed plaintiff flee with pistol in hand. (Pl.'s Aff. [122] at ¶ 36; Stock Dep. at 25, 32-33.) Third, the police, prior to searching plaintiff's residence, clearly had probable cause to believe that David Harris had committed the shootings based upon plaintiff's 911 call and Officer Stock's observations. Fourth, as discussed above, the police knew that David Harris had fled in the direction of plaintiff's house, had access to the house, and knew that there were weapons in the house, supporting the officers' reasonable belief that plaintiff had fled to the house or could return to the house to access the cache of weapons stored therein. Finally, any delay in apprehending David Harris would have caused great danger to the community and to the officers at the scene, as David Harris had already demonstrated his propensity far violence as moments before, he fire [sic] numerous shots into a residential neighborhood. *Cf. Standridge,* 810 F.2d at 1037 (FBI agents justified in conducting warrantless arrest at suspected armed robber's hotel room in part due to the fact that "any delay increased the risk

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that innocent members of the public might be injured if [defendant] attempted to leave the motel") and *Kreimes*, 649 F.2d at 1191 (finding warrantless search to be reasonable due to "a combination of hot pursuit, the immediate need to discover fleeing conspirators and the danger posited by the possibility of an armed fugitive remaining at large, late at night, in a rural area").

Indeed, plaintiff's admissions in the instant case further support the

conclusion that these officers acted reasonably in attempting to apprehend David Harris and by securing weapons and ammunition from plaintiff's home. In his deposition, plaintiff admonished Officer stock for failing to apprehend his son. He stated, "If he was running away and not trying to shoot at her, she could have pursued him and apprehended him before he even could have got in the house where he could have gotten more ammunition, more guns, reloaded, got out and terrorized the neighborhood." (Pl.'s Dep. at 115-16 (emphasis added).) Moreover, plaintiff admitted that, in seizing the weapons and ammunition from his house, the officers were trying to protect him and "everybody else." (*Id.* at 131.) Furthermore, plaintiff admitted that the officers returned all his weapons and ammunition to him when he was released from the hospital the next day, further supporting the officers' claims

that they were merely trying to protect plaintiff and the public by entering his house to search for David Harris and any weapons he could utilize.[20] (*Id.*)

Moreover, even if plaintiff were able to demonstrate that the search and seizures of his weapons violated the Fourth Amendment, plaintiff has failed to carry his burden of persuasion as to the qualified immunity issue. "Once an officer or official has raised the defense of qualified immunity, the burden of persuasion on that issue is on the plaintiff." *Montoute*, 114 F.3d at 184. That is, "[t]he burden of showing that an officer violated clearly established law falls on the plaintiff, and a plaintiff's citation of general rules and abstract rights is insufficient to strip a § 1983 defendant of his qualified immunity." *Jackson v. Sauls*, 206

[20] The Supreme Court has held, "The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene." *Maryland v. Ruis*, 494 U.S. 325, 337 (1990). *See also United States v. Tobin*, 923 F.2d 1506, 1513 (11th Cir. 1991). As discussed above, the officers clearly possessed specific facts that led them to believe that David Harris was hiding out in plaintiff's home. Accordingly, the police officers had the right to enter the home to attempt to arrest the armed and dangerous fugitive and concomitantly enjoyed the right to conduct a protective sweep for weapons that could be used against them or other unsuspecting members of the public.

F.3d 1156, 1165 (11th Cir. 2000). In the instant case, plaintiff has failed to

respond to defendants' motion for summary judgment and, accordingly, has not carried his burden of persuasion on this issue. Indeed, plaintiff has cited no case law demonstrating that the officers' actions in the instant case violated his Fourth Amendment rights. Accordingly, the Court **GRANTS** defendants' motion for summary judgment on plaintiff's claims based upon the May 1, 1996 search of his residence.

In addition, as the Court has concluded that the officers were legally in plaintiff's house searching for weapons and for the fleeing suspect, then the Court must also conclude that Sergeant Pritchett legally saw plaintiff's picture of the naked girl jumping rope. The only evidence before the Court on this subject indicates that the picture was located between plaintiff's dresser and the wall of his bedroom and that Sergeant Pritchett discovered the picture while legally searching for weapons.[21] Once Pritchett discovered the picture, he showed it to Lieutenant Brown, replaced it in its prior

[21] In his deposition, plaintiff admitted that the picture was between the wall and the dresser. (Pl.'s Dep. at 38.) Moreover, plaintiff has presented no evidence that Sergeant Pritchett's version of the facts is incorrect, as he did not depose Pritchett or any other officer who was in the house during the May 1, 1996 search.

position, and did not take the picture as evidence against plaintiff. This brief "seizure" of the undeniably disconcerting picture of a barely pubescent girl jumping rope in the nude did not violate plaintiff's clearly established constitutional rights. *Cf. Coolidge v. New Hampshire,* 403 U.S. 443, 465 (1971) ("Where the initial intrusion that brings police within plain view of [contraband] is supported, not by a warrant, but by one of the recognized exceptions to the warrant requirement, the seizure is legitimate.") and *Tobin,* 923 F.2d at 1513 ("The agents were, of course, free to seize any evidence they discovered in plain view within the proper scope of the protective sweep.").

3. May 9, 1996 search

Next, plaintiff contends that the May 9, 1996 search warrant was invalid and that the subsequent search of his home and the seizures of property within his home were illegal. For a search warrant to be valid, it must be supported by probable cause. Probable cause exists "where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *Ornelas v. United States*, 517 U.S. 690, 696 (1996). In the instant case, this

standard is easily met.

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As discussed *supra,* Detective Baggett began investigating the shooting almost immediately after the shooting began. During the course of this investigation, he interviewed six young girls and their guardians from plaintiff's neighborhood who explained to him about several videotapes that plaintiff had made containing two young girls feigning homosexuality and of one young girl exposing her breasts and dancing in a suggestive manner. Moreover, the girls told him that plaintiff altered a picture of a neighborhood girl wearing a bikini to appear as if the young girl was nude and gave Detective Baggett letters written by plaintiff containing inappropriate sexual language. Additionally, the girls explained that plaintiff had exposed himself to the girls an several occasions. Finally, Detective Baggett received a phone call from Sondra London, who Detective Baggett found to be credible, indicating that plaintiff was in possession of video tapes depicted very young girls engaged in sexual conduct.

Although plaintiff argues that Detective Baggett was lying and thus submitted a false affidavit to support his application for a search warrant,[22] he presents no evidence to support this

[22] These allegations, if proven, could possibly support a violation of *Franks v. Delaware,* 438 U.S. 154 (1978). As discussed above, however, plaintiff presents no evidence–other than the blustery allegations contained in his affidavits, deposition, and response to defendants'

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allegation. Indeed, in his deposition, plaintiff admits to possessing a videotape displaying a young neighborhood girl exposing her breasts and dancing in a suggestive manner, (Pl.'s Dep. at 204), to possessing numerous pictures depicting young girls in the nude, (*Id.* at 91-92), to altering the picture of the young neighborhood girl to make it appear as if she was nude, (*Id.* at 232-33), and to writing the letters to the young girls, (*Id.* at 208-10). Accordingly, by plaintiff's own admission, these facts that Detective Baggett utilized to garner the May 9, 1996 search warrant were true.

It is clear that Detective Baggett obtained plentiful evidence to support his reasonable belief that plaintiff possessed in his home sexually explicit pictures depicting children in various states of undress and a video

of a neighborhood girl exposing herself and acting in a sexual manner evidencing a violation of O.C.G.A. § 16-12-100.[23] The

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statement of undisputed facts--to support his claim that Detective Baggett lied in his affidavit. Moreover, in his deposition, plaintiff admitted that many of the facts included in the warrant were true.

[23] This section provides:

(a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, *dance*, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing,

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manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

* * *

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(b) (1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

* * *

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor engaged in any sexually explicit conduct can be found or purchased.

* * *

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor engaged in any sexually explicit conduct.

* * *

(d) The provisions of subsection (b) of this Code section shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to legitimate medical, scientific, or educational activities.

* * *

(g) (1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five years nor more than 20 years

Court concludes that Detective Baggett had sufficient probable cause to justify obtaining a warrant to search plaintiff's home.[24]

In addition, as Detective Baggett actually obtained a search warrant from a magistrate, under *United States v. Leon,* 468 U.S. 897, 922 n.23 (1984), the proper test is whether under the totality of the circumstances "a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization." *See also United Sates v. Taxacher,* 902 F.2d 867, 871 (11th Cir. 1990). Likewise, the Supreme Court has held that where a police official asserts qualified immunity when sued under § 1983 for obtaining a warrant based on an affidavit that is later determined to be insufficient, qualified immunity offers the same, albeit no

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and by a fine of not more than $100,000.00. In the event, however, that the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates paragraph (8) of subsection (b) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

O.C.G.A. § 16-12-100.1 (West 2000).

[24] As the Court concludes that the search warrant was supported by probable cause, all defendants are entitled to summary judgment as to this claim along with Detective Baggett.

more, protection in the civil context as *Leon* offers in the criminal context. *See Malley v. Briggs,* 475 U.S. 335, 344 (1986). Thus, although an officer cannot avoid liability on an insufficient application or warrant merely by passing the responsibility onto the issuing magistrate, he can, however, rely on the fairly high standard set out in *Leon:* that is, only where the warrant application is so lacking in indicia of probable cause as to render belief in its existence unreasonable shall immunity be lost. *Id.* at 345 ("The analogous question in this case is whether a reasonably well-trained officer in petitioner's position would have known that his affidavit failed to establish probable cause and that he should not have applied for the warrant."). As the Court has already determined that Detective Baggett had sufficient probable cause to support the search warrant, he also is entitled to qualified immunity on this claim

Plaintiff's final claim with regard to the May 9, 1999 search is that

the officers exceeded the scope of the warrant "in that it called for the seizure of items not illegal" and "none of the items seized were in violation [of O.C.C.A. § 16-12-100]." (Pl.'s Resp. to Defs.' Stmt. of Mat. Facts [121] at ¶ 31.) Neither of these two grounds constitute actionable constitutional claims. *See United States v. Schandl*, 947 F.2d

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462, 465-66 (11th Cir. 1991) ("It was inevitable that same irrelevant materials would be seized as agents searched through numerous documents for evidence.... Indeed, it might have been more disruptive had the agents made a thorough search of each individual document and computer disk before removing it from [defendant's] home and office."). The Court concludes that the police did not exceed the scope of the warrant by seizing "photographs, letters, a Zodiac printout, files, college term papers, poetry, computer equipment and computer files, videotapes, a camcorder, books and magazines." (*Id.*) In the search warrant, Detective Baggett requested to search for "video tapes containing child pornography (either commercial or home-made) depicting juvenile females performing various sexually explicit acts, video camera(s), computer components including disks, hard drives, monitors, and printers used to alter photos depicting juveniles in the nude[,] photographs of juvenile females showing participants in the nude, and computer altered or enhanced photos depicting juvenile females in the nude." (May 9, 1996 Search Warrant Application at 3.) Clearly, the items seized from plaintiff's house fell within the general types of items listed in the search warrant. *See Schandl,* 947 F.2d at 465-66. *See generally United States v. Jackson,* 120 F.3d 1226, 1229 (11th

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Cir. 1997). Inasmuch as the items seized were not specifically listed in the warrant, the officers were permitted "in the course of performing a lawful search for an item listed on the warrant, [to seize] other articles of an incriminating character." *United States v. Jenkins*, 901 F.2d 1075, 1081 (11th Cir. 1990). Moreover, plaintiff has not presented "clearly established law" that would have indicated to the officers that their behavior violated his fourth Amendment rights, and, accordingly, defendants are entitled to qualified immunity.

Accordingly, defendants' motion for summary judgment on plaintiff's claims stemming from the May 9, 1996 search is **GRANTED.**

4. Plaintiff's Arrests on May 9, 1996 and June 17, 1996

Plaintiff challenges the May 9, 1996 arrest on the grounds that it was not supported by probable cause. The evidence submitted in this case, however, supports the conclusion that the officers had more than enough probable cause to support the May 9, 1996 arrest for a misdemeanor violation of O.C.G.A. § 16-12-100

Plaintiff admits that, on May 9, 1996, he had numerous pictures of nude juvenile girls in his house. (Pl.'s Dep. at 56.) Specifically, plaintiff admits that, behind his dresser

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in his room, he had a framed picture of a young teenage girl jumping rope naked that he had clipped from a nudist magazine. (*Id.* at 58.) Moreover, the officers found numerous nude pictures of children, (*see* Pl.'s Dep. at Exs. 1, 4, 6, 8), several homemade photographs of a neighborhood juvenile girl posing in a bikini in various sexually suggestive poses (*Id.* at Exs. 10-14), a picture of two neighborhood juvenile girls suggestively pulling up their shirts and shorts, (*Id.* at Ex. 24), and many pictures of juvenile girls apparently clipped from girls clothes catalogues and a newspaper, (*id.* at Exs. 25-37). These pieces of evidence combined with the information that Detective Baggett collected in his investigation of plaintiff in the week prior to his arrest clearly supported his reasonable belief that plaintiff violated Georgia's child exploitation law. Accordingly, the Court concludes that Detective Baggett lawfully arrested plaintiff. This conclusion is bolstered by the fact that, on the same day, Detective Baggett obtained an arrest warrant signed by a neutral, detached magistrate.[25]

[25] As discussed *supra,* plaintiff's allegations that Detective Baggett lied in his application for the arrest warrant is [sic] contradicted by plaintiff's admissions in his deposition, his affidavits, and his response to defendants' statement of undisputed facts. *But cf. Jones V. Cannon,* 174 F.3d 1271, 1285 (11th Cir. 1999).

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Likewise, the officers had probable cause to arrest plaintiff on June 17, 1996. Indeed, Detective Baggett properly applied for and obtained an arrest warrant on the same day based on the fact that the officers had found a videotape made by plaintiff depicting a young, neighborhood girl performing a suggestive dance and exposing her breasts to the camera.

Moreover, it is undisputed that, in this video, the young girl motioned to him that her brother, a juvenile who was under the covers of his bed with his juvenile girlfriend, was being "jerked off" by his girlfriend. (Pl.'s Dep. at 192, 194-95.) Indeed, at the end of the video, the young girl came close to the camera and whispered to plaintiff that "she is jerking him off." Plaintiff responded, "And now the world will know." (*Id.* at 198.) This evidence clearly supports plaintiff's arrest under O.C.G.A. § 16-12-100. *See supra* note 23.

Finally, the officers in this case are entitled to qualified immunity, as plaintiff has failed to carry his burden of demonstrating that the officers violated "clearly established law" by arresting him on these two occasions. Indeed, plaintiff's admissions in his deposition clearly demonstrate that the officers had actual probable cause to arrest. *See Thornton v. City of Macon,* 132 F.3d 1395, 1399

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(11th Cir. 1998) ("An officer is entitled to qualified immunity where the officer had arguable probable cause, that is, where reasonable officers in the same circumstances and possessing the same knowledge as the Defendants could have believed that probable cause existed to arrest the plaintiffs.") Accordingly, defendants motion for summary judgment as to these two claims is **GRANTED**.

5. Mav 17. 1996 Search and Seizure

Although plaintiff alleges that the police broke into his house and stole a police scanner and other files from him, he offers no evidence to support this claim. Indeed, the only evidence before the Court on this issue is from Detective Baggett's deposition. When asked if he broke into plaintiff's house and searched through plaintiff's belongings to seize additional items, Detective Baggett replied, "No, sir, I did not." (Baggett Dep. at 42.) Aside from plaintiff's accusations, plaintiff has offered no *evidence* that the police illegally searched his home and seized items on May 17, 1997. (See pl.'s Dep. at 173-75 (admitting that he did not know the identities of those who broke into his house on May 17, 1996).) Accordingly, defendants are entitled to summary judgment as to this claim

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C. *Claims Against Municipal Defendants*

In *Monell v. Department of Social Services*, 436 U.S. 658 (1978), the

Supreme Court held that municipalities may not be found liable under 42 U.S.C. § 1983 on a theory of respondeat superior. *See also Scala V. City of Winter Park,* 116 F.3d 1396, 1399 (11th Cir. 1997). A local government is only liable under § 1983 "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury." *Mandel V. Doe,* 868 F.2d 783, 791 (11th Cir. 1989) (citing *Monell,* 436 U.S. at 694). It is by now well established that § 1983 liability may not be based on an employment relationship linking the local government to the offending employee; rather, "[r]ecovery from a municipality is limited to acts that are, properly speaking, acts 'of the municipality'--that is, acts which the municipality has officially sanctioned or ordered." *Id.* (citing *Pembaur v. Cincinnati,* 475 U.S. 469, 480 (1986)).

As the Court has concluded that the individual officers in this case did not commit any unconstitutional acts, the City cannot be liable under *Monell.* Moreover, plaintiff has offered absolutely no evidence in support of his municipal liability

claims. Accordingly, defendants' motion for summary judgment as to this ground is **GRANTED**.

III. State Law Claims

Because all the claims over which the Court had original jurisdiction now have been removed from the case due to the Court's decision to grant defendants' motions for summary judgment with respect to plaintiff's federal claims, § 1367(c)(3) applies.[26] As the Supreme Court has observed, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendant state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the federal-law claims have dropped out of the lawsuit in its early stages and only state-law claims remain, the federal court should decline the exercise of jurisdiction by dismissing the case without prejudice." *Carnegie-Mellon Univ. v. Cohill,* 484 U.S. 343, 350 (1986) (footnote omitted). *See*

[24] This section provides that "(t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if the district court has dismissed all claims over which it has original jurisdiction;" 28 U.S.C. § 1367(c) (3).

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also Hardy v. Birmingham Board. of Educ., 954 F.2d 1546, 1550 (11th Cir. 1992).

The court concludes that dismissal is appropriate in this case, because plaintiff's federal claims have been dismissed. Moreover, "[n]eedless decision of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well." *United Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966). Accordingly, the Court dismisses plaintiff's remaining state law claims without prejudice.

CONCLUSION

For the foregoing reasons, defendants' Renewed Motion for Summary Judgment [145] should be **GRANTED**, defendants' Motion to Dismiss Notice of Appeal [156] is **DENIED**, plaintiff's Motion for Sanctions Hearing [158] is **DENIED**, plaintiff's Third Motion to Enlarge Time to File Response in Opposition to Defendants' Memorandum of Law in support of Motion for Summary Judgment [164] is **DENIED**, plaintiff's Second Motion to Strike the Defense of the Alleged Bar by the Georgia Civil statute of Limitations [165] is **DENIED**, plaintiff's Motion for

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Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions for the Sanction of Default Judgment or, in the Alternative, Motion to Request Amendment of Order [166] is **DENIED**, and plaintiff's Motion for Reconsideration of the Court's Order of April 12, 2000 Denying the Plaintiff's Motions for Enlargement of Time to File Response to Defendants' Motion for Summary Judgment or, in the Alternative, Motion to Request Amendment of Order [167] is **DENIED**.

SO ORDERED, this 5 day of May, 2000.

/s/ Julie E Carnes
JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF. GEORGIA
ATLANTA DIVISION

CHRISTOPHER T HARRIS,

Plaintiff,

vs.

CITY OF DORAVILLE, CITY OF DORAVILLE POLICE DEPARTMENT, CHIEF RON DAVIS, MAJOR CLIFFORD EDWARDS, LIEUTENANT ROBERT BROWN, DETECTIVE T.L. BAGGETT, SERGEANT H.M. PRITCHETT, OFFICER BETH STOCK, and UNKNOWN DORAVILLE POLICE OFFICERS

Defendants.

CIVIL ACTION FILE
NO.1:98-cv-1326-JEC

JUDGMENT

This action having come before the court, Honorable Julie E. Carnes, United States District Judge, for consideration of defendants' motion for summary judgment, and the court having granted said motion, it is

Ordered and Adjudged that the plaintiff take nothing; that the defendants recover its costs of this action, and the action be, and the same hereby, is **dismissed**.

Dated at Atlanta, Georgia, this 8th day of May, 2000.

LUTHER D. THOMAS
CLERK OF COURT
By: /s/ Wendy S. Evans
Deputy Clerk

Prepared, Filed and Entered
in the Clerk's Office
May 8, 2000
Luther D. Thomas
Clerk of Court
By: /s/ Wendy S. Evans
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHRISTOPHER T. HARRIS

Plaintiff,

v.

CIVIL ACTION NO.
1:98-CV-1326A-JEC

CITY OF DORAVILLE, CITY OF DORAVILLE POLICE DEPARTMENT, CHIEF RON DAVIS, MAJOR CLIFFORD EDWARDS, LIEUTENANT ROBERT BROWN, DETECTIVE T.L. BAGGETT, SERGEANT H.M. PRITCHETT, OFFICER BETH STOCK, and UNKNOWN DORAVILLE POLICE OFFICERS

Defendants.

ORDER

This case is presently before the Court on plaintiff's Motion for Reconsideration of the Court's Order of May 8, 2000 Granting the Defendants' Motion for Summary Judgment [176] and plaintiff's Motion to Alter or Amend Order and Judgment [177]. The Court has reviewed the record and the arguments af the parties and, for the reasons set forth below, concludes that plaintiff's Motion for Reconsideration of the Court's Order of May 8, 2000 Granting the Defendants' Motion for Summary Judgment [176] is **DENIED** and plaintiff's Motion to Alter or

[unnumbered page break]

Amend Order and Judgment [177] is **DENIED**.

SO ORDERED, this 13 day of June, 2000.

/S/ Julie E. Carnes
JULIE E. CARNES
UNITED STATES DISTRICT JUDGE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-13645
Non-Argument Calendar

D.C. Docket No. 98-01326-CV-JEC-1

CHRISTOPHER T. HARRIS,

Plaintiff-Appellant,

versus

CITY OF DORAVILLE, Georgia,
DORAVILLE POLICE DEPARTMENT, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Northern District of Georgia

(April 6, 2001)

Before EDMONDSON, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

[unnumbered page break]

Christopher T. Harris, proceeding pro se, appeals the district court's order granting summary judgment in favor of the defendants in his civil rights action, filed pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1367. On appeal, Harris argues that the district court erred (1) in its evidentiary rulings

in granting summary judgment; (2) by failing to grant his motions for extension of time in which to file a response to the defendants' motion for summary judgment; (3) by denying various discovery motions; (4) by denying his motion for immediate stay; and (5) by denying his motions for leave to file an amended complaint and to add defendants.

We review the district court's evidentiary rulings for abuse of discretion, and will reverse only if the moving party establishes that the ruling resulted in a substantial prejudicial effect. See Alexander v. Fulton County, Ga., 207 F.3d 1303, 1326 (11th Cit. 2000). A district court's decision to grant or deny a stay of proceedings before it is discretionary, and we will not disturb that decision absent an abuse of discretion. See Barfield v. Brierton, 883 F.2d 923, 932 (11th Cit. 1989). Decisions on discovery are entrusted to the sound discretion of the district court and are reviewed for abuse of

[1] Harris also argues that the district court erred by finding that "arguable probable cause" and "exigent circumstances" existed to warrant his arrest and the search of his home; finding that the city of Doraville could not be held liable under a theory of respondeat superior; holding that his claims arising out of his May 1, 1996, arrest were barred by the statute of limitations; and declining to exercise supplemental jurisdiction over his state law claims. In its 56-page order, the district court throughly addressed each of these issues and rejected them. After a de novo review, viewing the evidence and all reasonable inferences in favor of the defendants, we too find that these arguments have no merit. See Patrick v. Floyd Med. Cit., 201 F.3d 1313, 1315 (11th Cir. 2000).

discretion. See Burger King Corp. v. Weaver, 169 F.3d 1310, 1315 (11th Cir.), cert. dismissed, 528 U.S. 948 (1999). We likewise review decisions on motions for leave to amend pleadings for abuse of discretion. See id.

Upon thorough review of the record, as well as careful consideration of the parties' briefs, we find no reversible error and affirm.

The relevant facts are straightforward. On May 8, 1998, Harris filed this civil rights action against numerous defendants including the City of Doraville, Georgia; the Doraville Police Department; Ron Davis, the Chief of Police; Major Clifford Edwards; Lieutenant Robert Brown; Detective T.L. Baggett; Officer H.M. Pritchett; Officer Beth Stock; and various unnamed Doraville police officers. Harris's complaint arose out of the Doraville officers' actions in responding to a 911 call placed by Harris and the officers' subsequent investigation and arrest of Harris for felony sexual exploitation of children and misdemeanor exploitation of children in a visual medium.

On May 1, 1996, Harris placed a 911 call to report that his son had just fired a revolver at him five times in a residential neighborhood. When the police arrived, they began a search of Harris's house, during which they discovered pictures, videotapes, and other paraphernalia of children being sexually exploited. Harris alleged that this, and other subsequent searches, were unconstitutional, and that his arrest on June 17, 1996 for felony sexual exploitation of children was not supported by probable cause. Harris

sought both compensatory and punitive damages and an order enjoining the defendants from further abusive conduct.

The district court granted summary judgment in favor of the defendants, finding that since Harris did not file his complaint until May 8, 1998, the counts as to the May 1, 1996 search and seizure were barred by the two-year statute of limitations, O.C.G.A. § 9-3-33, since the facts underlying the action were apparent to a reasonably prudent person at that time, see Mullinax v. McElhennev, 817 F.2d 711, 716 (11th Cir. 1987). The district court also found that the officers were performing discretionary functions when they performed the searches, seizure and ultimate arrest of Harris, and that their actions did not violated [sic] clearly established law. Accordingly, the district court found that the defendants were entitled to qualified immunity.

We can find no error in the district court's analysis of the statute-of-limitations and qualified immunity defenses. Indeed, with regard to the latter, we note that even if Harris could demonstrate a violation of his Fourth Amendment rights, he wholly failed to carry his burden of persuasion in the district court. "Once an officer or official has raised the defense of qualified immunity, the burden of persuasion on that issue is on the plaintiff." Montoute, 114 F. 3d at 184. "The burden of showing that an officer violated clearly established law falls on the plaintiff, and a plaintiff's citation of general rules and abstract rights is insufficient to strip a § 1983 defendant of his qualified immunity." Jackson v. Sauls, 206 F. 3d 1156, 1165 (11th Cir. 2000). Here, Harris failed to even respond to the

defendants' motion for summary judgment. He did not present any evidence in opposition to the defendant's motion, nor did he cite case law supporting his contention that the officers' actions violated his constitutional rights. We

can find no error in the district court's determination to enter summary judgment on Harris's claims.

Harris also argues that the district court improperly relied on various items that were not entered into evidence in granting summary judgment to the defendants. Our review of the record reveals that the district court did not rely on improper evidence in granting summary judgment to the defendants. First, the district court had the authority to use the transcript of Harris' deposition because a court may rely on the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, to show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law, when handling a summary judgment motion. See Fed.R.Civ.P. 56; Clark, 929 F.2d at 608. Although Harris contends that he was denied access to this transcript, he admits that the reason he could not obtain it was because he refused to pay for it.

Furthermore, the district court also permissibly discussed one of the seized pictures in its order since the photo was described in Detective Baggett's deposition, which was submitted into evidence. Harris's argument that the district court improperly relied on the photograph itself, which was not entered into evidence, has no merit.

Moreover, despite Harris' allegations, the district court did not make factual errors which warrant a reversal of the grant of summary judgment to the defendants. On the contrary, the "errors" that Harris asserts are nothing more than a disagreement with the court on its selection of wording, and Harris presents no substantive argument that he could not have presented in response to the defendants' motion for summary judgment, which he refused to file. Harris was given ample opportunity to give his rendition of the facts in response to the summary judgment motion but refused to take this opportunity. Indeed, the district court relied on statements made in Harris' own deposition which, surely, presented the facts of the case as Harris saw them. Simply put, Harris has not established that any genuine issues of material fact remained that would prevent the entry of summary judgment in the defendants' favor.

Next, Harris challenges the district court's decisions on his motions to compel the defendants to produce certain information relating to the pending felony charge, motions requesting leave to depose certain witnesses for a second time, motions requesting discovery hearings, and motions asking

the court to impose sanctions on the defendants for their failure to produce the requested materials. The district court denied each of these motions. Harris contends the court abused its discretion because (1) there was no ongoing criminal investigation; (2) the questions he wanted to ask in deposing Baggett and Stock a second time were never answered the first time and were unobtainable elsewhere; (3) he could not proceed further without the requested materials from the

defendants; (4) he was entitled to a hearing so that the district court could ascertain whether there truly was an ongoing criminal investigation taking place; and (5) the court should have allowed Harris to demonstrate the veracity of his claims that the defendants were willfully violating discovery violations under the guise of a privilege.

As a general rule, summary judgment should not be granted until the party opposing the motion has had an adequate opportunity to conduct discovery. See Reflectone, Inc. v. Farrand Optical Co., Inc., 862 F.2d 841 (11th Cir. 1989). Summary judgment may only be decided upon an adequate record; therefore, the party opposing summary judgment may move the court to permit discovery which is necessary to oppose the motion. See Fed.R.Civ.P. 56(f); Reflectone, 868 F.2d at 843. A party to a lawsuit is entitled to all information relevant to the subject matter of the suit unless such information is privileged. See Fed.R.Civ.P. 26(b)(1). The pendency of a criminal investigation is one such reason for denying discovery of investigative reports in a subsequent or contemporaneous civil case. See In re Eisenberg, 654 F.2d 1107, 1110-11 n.5 (5th Cir. Sept. 1981).

Here, the information Harris sought was not discoverable because it was privileged as it related to the ongoing investigation of his felony charge. See In re Eisenberg, 654 F.2d at 1110-11 n.5. The crux of each of Harris's numerous discovery motions, as well as his appellate brief, is that the defendants were not entitled to claim a privilege over the requested materials of an ongoing criminal investigation, because they had failed to prove

that there actually was an ongoing criminal investigation. Despite the district court's numerous orders denying each of these motions and declaring that the defendants were, indeed, entitled to the privilege, Harris continues to contest this finding. Quite simply, this argument is without merit as the district court

determined that the requested materials related to the pending felony charge of sexual exploitation of children and, therefore, constituted an ongoing criminal investigation. The district court did not abuse its discretion in making this determination. See In re Eisenberg, 654 F.2d at 1111 n.5.

With respect to Harris's motions to depose certain witnesses for a second time, the Federal Rules of Civil Procedure prohibit repeated depositions without leave of court. See Fed.R.Civ.P.30(a)(2)(B). The district court determined that Harris had a full and fair opportunity to question the defendants at the first deposition, and that Harris's discontent with some of the objections made by the defendants at the deposition was not a sufficient reason to allow for a second deposition. We can find no abuse of discretion in this decision. See Weaver, 169 F.3d at 1315.

Moreover, with regard to Harris's motions requesting discovery and sanctions hearings, the district court specifically found that the defendants had "complied fully with the Court's Orders." Harris nevertheless contends that the district court erred in making this finding because the defendants had asserted "patently fraudulent" claims of a privilege. As we have determined that the district court did not err in finding that the

requested materials were privileged, we also find no abuse of discretion in its refusal to conduct hearings relating to the defendants' assertion of privilege.

Next, Harris argues that there has been an unconstitutional delay in resolving pending "equitable litigation which is of fundamental merit" to the instant civil action. The so-called "equitable litigation," according to Harris, is the pending felony charge. He submits that the defendants have unconstitutionally delayed the prosecution of this charge in an attempt to sabotage Harris's prosecution of the instant civil action. We are not persuaded.

Harris was arrested on two charges stemming from the events giving rise to this civil action. The misdemeanor charge was dismissed on April 28, 1998. The second charge, involving felony sexual exploitation of children, was not dismissed. In numerous motions, Harris requested that the court stay the civil proceedings because he had not been given certain information relating to the felony charge by the defendants. The district court denied these motions, noting that Harris's motions were merely attempts to seek discovery of materials that it had already denied him on more than one occasion. A motion for stay of the proceedings is granted upon the showing of four factors which include that the movant is likely to prevail on the merits. See

Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986). Harris was not likely to prevail on the merits of his motion because, as discussed above, he was not entitled to discovery of the materials he was seeking. The district court did not err by denying his motions for stay.

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Harris also argues that the district court abused its discretion in refusing to grant him leave to file amended pleadings to correct certain typographical and syntactical errors, to improve language and comprehension, to add counts alleging violations of the Sixth Amendment right to counsel based on the police officers' alleged refusal to allow him to contact an attorney at any time before his bond hearing relating to the May 9, 1996, arrest, and to add a new cause of action for malicious conspiracy.

A party may amend a pleading after a responsive pleading has been filed "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). If a complaint is subject to dismissal for any reason, including for failure to state a claim, leave to amend need not be given. See Halliburton & Associates v. Henderson, Few & Co., 774 F.2d 441, 444 (11th Cir. 1985). The district court found Harris's Sixth Amendment claims to be futile and unsupported by the evidence he brought forth in his motion. We can find no error in this conclusion since it is well-established that the right to counsel does not attach until the state "initiates adversarial judicial proceedings... and has committed itself to prosecute the defendant, "by way of preliminary hearing, indictment, information or arraignment. United States v. Langley, 848 F.2d 152, 153 (11th Cir.), cert. denied, 488 U.S. 897 (1988). An arrest or warrant for an arrest does not trigger the Sixth Amendment protections. See id. Harris could not have prevailed on this claim because his Sixth Amendment rights had not

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attached prior to the bond hearing, and as he concedes in the motion, he was provided with counsel at that preliminary hearing.

Furthermore, the district court determined that Harris had ample opportunity to raise his conspiracy claim prior to filing a second motion for leave to file an amended pleading since he based the allegation on the same facts that were available to him at the filing of the original complaint. The court did not err in its determination, as Harris concedes in his amended complaint, that the basis for the conspiracy charge was the same facts as were

laid out in the original complaint. Denial of a motion for leave to amend where the facts supporting the proposed amendment were known at the time of the original pleading, and where the amendment would cause delay at a late stage in the proceedings, is proper. See National Serv. Indus., Inc. v. Vafla Corp., 694 F.2d 246, 249 (11th Cir. 1982). The district court did not abuse its discretion in refusing to allow the amended pleadings.

Finally, Harris argues that the district court erroneously denied him additional time to file a response to the defendants' motion for summary judgment. When a litigant requests an extension of a time period, the court may grant the extension if the failure to file in a timely manner would be the result of excusable neglect. See Fed.R.Civ.P. 6(b). Excusable neglect requires an examination of all relevant circumstances, including the danger of prejudice to the nonmovant, the length of the delay and its impact on the proceedings, the reason for the delay, including whether it is within the control of the

movant, and whether the movant is acting in good faith. See Advanced Estimating Sys. Inc. v. Riney, 77 F.3d 1322, 1325 (11th Cir. 1996).

The district court did not abuse its discretion in refusing to grant Harris any further extensions of time in which to file his response, especially in light of the fact that, as discussed above, Harris was not entitled to the privileged information he sought during discovery. Moreover, the district court many times noted that the length of the delay was due in no small measure to Harris's numerous discovery and sanctions motions. Indeed, the district court cautioned Harris that if he were a litigant represented by counsel, it would have long since sanctioned him for his frivolous motions. The district court did not err by denying Harris's requests for extensions of time to reply to the defendants' motion for summary judgment motions.

AFFIRMED.

United States Court of Appeals

For the Eleventh Circuit

No.00-13645

District Court Docket No.
98-01326-CV-JEC-1

CHRISTOPHER T HARRIS,
Plaintiff-Appellant,

versus

CITY OF DORAVILLE, Georgia,
DORAVILLE POLICE DEPARTMENT,
RON DAVIS, Chief of Police,
CLIFFORD EDWARDS, Major,
ROBERT BROWN, Lt., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion, included herein by reference, is entered as the judgment of this court.

Entered: April 6, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

[last page]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-13645-FF

CHRISTOPHER T. HARRIS,

Plaintiff-Appellant.

versus

CITY OF DORAVILLE, Georgia,
DORAVILLE POLICE DEPARTMENT,
RON DAVIS, Chief of Police,
CLIFFORD EDWARDS, Major,
ROBERT BROWN, Lt., et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Georgia

BEFORE: EDMONDSON, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant is DENIED.

ENTERED FOR THE COURT:

/s/ signature illegible
UNITED STATES CIRCUIT JUDGE

ORD-41

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Supreme Court, U.S.
FILED
SEP 28 2001
CLERK

No. 01-361

IN THE

Supreme Court of the United States

CHRISTOPHER T. HARRIS,

Petitioner,

v.

CITY OF DORAVILLE, GEORGIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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OPINIONS AND JUDGMENT BELOW

Within the Supplemental Appendix to the Petition for Writ of Certiorari, Petitioner has provided the Summary Judgment Order of the Honorable Julie E. Carnes of the United States District Court for the Northern District of Georgia, as well as the decisions of the United States Court of Appeals for the Eleventh Circuit that affirmed the award of summary judgment and denied Petitioner's request for rehearing.

STATEMENT OF JURISDICTION

Jurisdiction to consider the Petition for a Writ of Certiorari appears to be appropriate in this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action arises under the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983, and case law construing those provisions.

STATEMENT OF THE CASE

Christopher T. Harris, the petitioner herein, filed a civil rights lawsuit against the City of Doraville, Georgia, and certain of its police officers, arising from the search of his property and his arrest and subsequent criminal proceedings for sexual offenses relating to minors. *See* Harris' complaint [Doc. 1]. The following is a correction of the misstatement of facts written by Harris in his petition.

On May 1, 1996, Harris discovered some of his many firearms missing. Christopher Harris Dep., pp. 119-21; Officer

Beth Stock Dep., p. 9; 5/1/96 Incident Report of Officer Beth Stock. Allegedly fearing that his mentally disturbed adult son might have the weapons and use them to hurt himself or others, Harris called the Doraville Police for assistance using 911. Harris Dep., pp. 199-21; Stock Dep., p. 9; 5/1/96 Stock Report. Doraville dispatched police officer Beth Stock to investigate the alleged firearms theft. Stock Dep., p. 9; 5/1/96 Stock Report. Christopher Harris' son, David Harris, did in fact have at least one of Mr. Harris' guns, which he used to shoot Mr. Harris multiple times. Complaint, ¶ 2; Harris Dep., pp. 16, 130; 5/1/96 Stock Report (David Harris eventually plead guilty to aggravated assault for shooting his father.)

When Officer Stock arrived outside the Harris home, Officer Stock witnessed David Harris brandishing and shooting a weapon, observed that Christopher Harris had been shot, rendered medical assistance to him, and called for police backup and medical support. Stock Dep. pp. 23, 28-29, 34; 5/1/96 Stock Report. Backup officers and medical personnel then arrived on the scene, and Harris was taken away by ambulance. Stock Dep., pp. 28, 34; Detective Timothy Baggett Dep., p. 7; 5/1/96 Stock Report.

Because Officer Stock did not apprehend the David Harris, and his whereabouts were unknown when the other officers arrived on the scene, the police officers began to search for David Harris and established a perimeter around the crime scene. Stock Dep., pp. 28, 34; Baggett Dep. p. 7; 5/1/96 Stock Report; 5/3/96 Supplemental Report of H.M. Pritchett, attached to Pritchett Affidavit.

While clearing the Harris home for weapons and the suspect on May 1, 1996, Defendant Pritchett located a framed picture of a nude juvenile female, when he moved a gun case. 5/3/96

Pritchett Supplemental Report. Officer Pritchett noted this fact, and pointed it out to Defendant Brown. 5/3/96 Pritchett Supplemental Report. Pursuant to the task of clearing the crime scene, Doraville police officers seized weapons located in the home as evidence and for safety purposes, but the weapons were returned to plaintiff shortly thereafter. 5/3/96 Pritchett Supplemental Report; Harris dep., p. 131.

Defendants Edwards, Pritchett, Davis, and Stock engaged in no conduct for which they can even arguably be held liable to the Harris after May 1, 1996, and Harris filed his complaint on May 8, 1998.

Defendants subsequently received information that caused them to believe with reasonable certainty that the Harris' home contained evidence that Harris had violated Georgia's child sexual exploitation laws. Timothy Baggett Aff., ¶ 4. Defendant Baggett detailed the information in support of this belief in his May 9, 1996 Application and Affidavit for a Search Warrant. Baggett Aff., ¶ 4; May 9, 1996 Application and Affidavit for a Search Warrant, attached to Baggett Aff. Specifically, these sources indicated that Harris had filmed and retained a videotape of two juvenile females acting in a homosexual manner with one another, filmed and retained at least one videotape of a juvenile female exposing her breasts to him, possessed videotape of very young girls behaving in a sexual manner, and possessed photos of nude juveniles, at least some of which were computer-altered to have adult genitals. *Id.* One juvenile informant turned over to defendants romantic letters Harris wrote to another juvenile in which he calls her "sexy." *Id.* Based on this and other incriminating information, defendant Baggett applied for and obtained a search warrant for the Harris home. *Id.* During the resulting search, evidence of criminal violations was uncovered. Baggett Aff., ¶ 7.

While executing the search warrant, defendants seized only those items specifically listed in the warrant and those which they believed tended to corroborate the plaintiff's bent of mind toward sexual attraction to children, as well as his inappropriate relationships with juvenile females, including photographs, letters, a Zodiac printout, files, college term papers, poetry, computer equipment and computer files, videotapes, a camcorder, books, and magazines. *Id.* at ¶ 8. Based on the evidence gathered during the search, defendant Baggett submitted an application for an arrest warrant, which in fact issued. *Id.* at ¶ 9.

Upon further review of the evidence seized from the Harris home, defendants discovered a videotape depicting a juvenile female engaged in a sexually suggestive dance being filmed by the plaintiff in which she exposes her breasts. Based on this and other information, defendant Baggett applied for a second arrest warrant against the plaintiff, this time for a felony violation of O.C.G.A. § 16-12-100, and the warrant in fact issued. *Id.* at ¶ 11.

Based on the foregoing facts, Harris claimed that his constitutional rights were violated. The district court found otherwise in a comprehensive 56-page summary judgment opinion by the Honorable Julie E. Carnes. The court also noted that Harris refused to file a substantive response to defendants' motion for summary judgment, despite repeated warnings from the court to do so, and that Harris had come forward with no evidence to support his claims. The Eleventh Circuit agreed with the district court's analysis, and affirmed. The Eleventh Circuit thereafter denied Harris' rather threatening petition for rehearing, and the instant certiorari petition followed.

Harris is *pro se*.

SUMMARY OF ARGUMENT

Petitioner does not reference Rule 10 of this Court's rules in his pleading, but it appears that he *might* be seeking review under Rule 10(c). Under that subparagraph, a petitioner may seek review if the Eleventh Circuit "has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

Petitioner's "questions" do not meet this criteria, as they essentially criticize the manner in which the Courts below construed the factual record and applied those facts to long-standing constitutional principles. Simply stated, Petitioner did not bother to respond to defendants' motion for summary judgment, and came forward with absolutely no evidence to establish the violation of a constitutional right or overcome defendants' defense of qualified immunity. In the words of the Eleventh Circuit, "Indeed, . . . we note that even if Harris could demonstrate a violation of his Fourth Amendment rights, he wholly failed to carry his burden of persuasion in the district court. Once an officer or official has raised the defense of qualified immunity, the burden of persuasion is on the plaintiff." *Christopher T. Harris v. City of Doraville, Georgia et al.*, No. 00-13645, slip op. at 3 (11th Cir. Apr. 6, 2001) (punctuation and citation omitted). Under settled law in the Eleventh Circuit as well as this Court, the officers comported with all constitutional norms, and no basis for individual or municipal liability has been shown.

Consequently, the instant petition for certiorari review should be denied.

REASONS FOR DENYING THE WRIT

In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955), this Court discussed the dimensions of its discretionary review and why cases, such as this one, are not among those for which such review will be granted:

> [W]e have considered anew whether this case is one in which "there are special and important reasons" for granting the writ of certiorari, as required by Supreme Court Rule 19, 28 U.S.C.A.
>
> * * *
>
> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants . . . "Special and important reasons" imply a reach to a problem beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

Rice, 349 U.S. at 616 (citations omitted).

Here, Petitioner claims as a threshold matter that the courts below, because of "apparent prejudice" against him, overlooked facts and misconstrued the record. Even if true, this issue does not warrant certiorari review as it does not involve "an important question of federal law." Indeed, as Rule 10 specifically provides,

certiorari review is "rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Accordingly, petitioner's request for certiorari review based on the lower courts' interpretations of the factual record should be denied. Furthermore, Petitioner's request for certiorari review based on the lower courts' clear application of these facts to settled Eleventh Circuit *and Supreme Court* law (Questions 5 and 6) are similarly unavailing.

Petitioner's Questions 1, 2, 3, and 4

These questions present nothing for review. Plaintiff simply takes issue with the discovery rulings of the district court, and, accordingly, they are dealt with in one section. As an initial matter, there is no "equitable litigation" as Harris argues in question 3. Harris confuses his sexual exploitation of children charge in state court with the civil litigation he subsequently initiated in federal court. Harris details the procedural history of his sexual exploitation of children charge in a futile attempt to cloud the fact that *this appeal* concerns the district court's entry of final judgment against him, not the status of his criminal charges. Harris' argument that he has "equitable litigation" underway in another court that was "of fundamental merit" to his civil rights claims in the district court has no merit.

According to Harris, the district court erred in not staying the civil case until his criminal charge was resolved. Contrary to the assertions in his brief, Harris does not have any "equitable litigation" underway. Harris concedes that he uses the phrase "equitable litigation" to refer to his pending felony sexual exploitation of children charge. Presumably, Harris uses this language to meet the test of the *now defunct* Enelow-Ettelson doctrine. *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 278, 108 S. Ct. 1133, 1137 (1988);

Feldspar Trucking Co. v. Greater Atlanta Shippers Assoc., Inc., 849 F.2d 1389 (11th Cir. 1988). The Enelow-Ettelson doctrine held that an order by a federal court staying or refusing to stay its own proceedings might be appealable if two conditions were met: (1) the action in which the order was entered must be one that was by its nature an action at law, and (2) the order must based on some matter that would have been considered an equitable defense or counterclaim before the merger of law and equity. *See Gulfstream Aerospace Corp.*, 485 U.S. at 281, 108 S. Ct. at 1139. Calling this doctrine "deficient in utility and sense," the Supreme Court abolished it. *See id.* Harris first raised this argument in a frivolous appeal of the district court's discovery rulings prior to final judgment. As this doctrine was abolished in 1988, Harris may not, by the application of misnomers, use it in an attempt to obtain a reversal of the district court's judgment, and his question presents nothing for this court to review.

There was no basis on which the district court should have stayed the litigation brought by Harris, as he argues in question 3. A stay is an equitable remedy, and as such requires that the movant have "clean hands." *See Federal S & L Ins. Corp. v. Two Rivers Assoc, Inc.*, 880 F.2d 1267, 1272 (11th Cir. 1989) (equitable remedy may be denied if movant has "unclean hands"). Harris did not, however, have clean hands in this case because his stay request was nothing more than an attempt to delay the case and to circumvent prior court orders relating to the discovery of materials in an ongoing criminal investigation. Harris tried *five separate times* to circumvent the district court's order relating to discovery of certain files relating to a pending child exploitation charge. *See* Order of April 12, 2000, p. 4 [Doc. 161-4]. The district court denied his repeated attempts to have the ruling changed, and district courts are accorded broad discretion in resolving discovery disputes. *See Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 (11th Cir. 1993). The orders in this

case show a sound exercise of that discretion, and nothing in questions 1-4, relating to the court's discovery orders, presents a question for review.

Harris argues in questions 1 through 4 that one of his criminal cases was *not* ongoing (and therefore he was entitled to discovery relating to it), and that the prosecutor's not presenting the case to the grand jury was a constitutional violation. The appropriate standard in reviewing the denial of a stay is abuse of discretion, and Harris has not shown that the district court abused its discretion. Indeed, the district court detailed its reasons for denying the stay, and they are sound. The district court determined earlier that since the case could be reopened at any time (and was not dismissed), Harris had no right to discover materials that were part of an ongoing criminal investigation. *See* Order of April 20, 1999, pp. 7-8 [Doc. 75-7]. Harris subsequently filed a motion for reconsideration that was denied. *See* Order of January 20, 2000, p. 7 [Doc. 139-7]. Harris filed his motion for immediate stay merely as a *third* attempt at obtaining access to materials the district court had repeatedly denied him as being part of an ongoing criminal investigation. *See* Order of January 20, 2000, p. 13 [Doc. 139-13]. Undeterred, Harris was denied a fourth and fifth attempt at the same materials, in addition to an interlocutory appeal and an "emergency motion" to the Eleventh Circuit. *See* Order of February 23, 2000, pp. 3-4 [Doc. 146-3]; Order of April 12, 2000, p. 4 [Doc. 161-4].

As the record supports the district court's conclusion that plaintiff's motion for an immediate stay was merely another attempt to seek discovery of materials to which the court had previously denied him access more than once (and Harris concedes that this was a reason he filed the motion for a stay), this Court should not interfere with the district court's exercise

of discretion. *Accord Barfield v. Brierton*, 83 F.2d 923, 932 (11th Cir. 1989).

Harris describes at length the conduct of the district attorney in his criminal case. The district attorney is *not* a defendant in this civil case, however. Harris' question 1 is more properly brought by appealing his criminal case, which he states in his petition that he did, receiving a *denial of certiorari* from the United States Supreme Court in 1999. Harris Petition, pp. 1 and 9. As this Court has already denied certiorari on this exact same issue, Harris presents nothing for review by taking a second bite at the apple.

Even if this Court were to look at the issues in question 1 this time around, the case cited by petitioner, *Klopfer v. State of North Carolina*, 386 U.S. 213, 87 S. Ct. 988 (1967) is inapplicable to the case at bar since in that case the accused could be tried at any time under the original indictment and thus there was an indefinite continuation of a pending indictment. As petitioner concedes, he has *not* been indicted. The primary pre-indictment time restriction is the statute of limitations. *See United States v. Marion*, 404 U.S. 307, 322, 92 S. Ct. 455 (1971).

As for his "constitutional rights to a speedy trial" argument, "Constitutional speedy trial questions involve issues of fact that should be resolved by a court having jurisdiction of the criminal prosecution." *Garrett v. Arrington*, 245 Ga. 47, 262 S.E.2d 808, *cert. denied*, 446 U.S. 968, 100 S. Ct. 2948 (1980). The proper court is the state court in which his criminal charges were brought, not the federal district court where he brought civil rights claims against the City of Doraville and its officers. Again, Harris raised the issue in his criminal proceeding, and appealed the adverse decision all the way to this Court in 1999. His second attempt to appeal the exact same issues presents

nothing for this Court to review. Harris sued the City of Doraville and individual police officers that were involved with his arrest, but the DeKalb County District Attorney is not a defendant in this litigation. Accordingly, any alleged actions by the district attorney cannot be addressed on appeal from a case in which the district attorney is not even a party.

Although Harris argues in question 2 that the district court abused its discretion, he cites no case law in support of this assertion. The case law is contrary to what Harris contends. *See, e.g., In re Eisenberg*, 654 F.2d 1107, 1111 n.5 (5th Cir. 1981) (a privilege "which may be formally invoked is the federal privilege for production of documents relating to ongoing criminal investigations"); *Swanner v. United States*, 406 F.2d 716, 719 (5th Cir. 1969); *Sirmans v. City of South Miami*, 86 F.R.D. 492, 495 (S.D. Fla. 1980) ("federal privilege for criminal investigative files provides for the protection of files relating to ongoing criminal investigations"). Consequently, the district court was well within its discretion to deny discovery related to an ongoing criminal investigation.

Petitioner's Questions 5 and 6

In his Questions 5 and 6, Harris takes issue with the lower court's ruling on qualified immunity. The district court found that the officers had exigent circumstances and then probable cause for the search and arrest of plaintiff. Petitioner's basis for seeking certiorari review on this issue involves the application of settled qualified immunity principles. No basis exists to question the application of the Eleventh Circuit's and this Court's qualified immunity principles to the facts of the instant case. Simply put, Petitioner does not (and cannot) show that the deputies in his case violated any "clearly established law" of which a reasonable officer would have known. *See Anderson v. Creighton*, 486

U.S. 635 (1987). In this regard, respondents incorporate by reference their summary judgment and appellate briefs, as well as the sound reasoning of the district court in its summary judgment order.

Probable cause has been defined as "a doctrine of reasonable probability and not certainty." *United States v. Magluta*, 44 F.3d 1530, 1535 (11th Cir. 1995). "Probable cause exists where the facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient to warrant a person of reasonable belief that an offense has been or is being committed by the person to be arrested." *Id., quoting United States v. Allison*, 953 F.2d 1346, 1350 (11th Cir. 1992). The existence of probable cause is also a legal question to be resolved by the court. *United States v. Banshee*, 91 F.3d 99, 101 (11th Cir. 1996).

The facts described above, in the statement of facts section, are undisputed by any evidence in the record. Furthermore, petitioner refused to respond to plaintiff's motion for summary judgment with evidence sufficient to overcome defendant's qualified immunity defense. The photograph in his possession of a minor masturbating and the videotape (filmed by Harris) seized from his home which shows minors engaged in sexual acts are sufficient to establish probable cause for his arrest. Furthermore, depictions of children "acting in a homosexual manner towards one another," a videotape of a neighborhood child exposing her breasts, and pictures of children that are computer altered to show exposed genitalia are all sufficient to establish probable cause.

The correct standard for a qualified immunity analysis is whether the officers had "arguable probable cause." *See Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997).

Furthermore, the correct standard for a search conducted with a warrant is whether a "reasonably well trained officer would have known the search was illegal despite the magistrate's authorization." *See Malley v. Briggs*, 475 U.S. 335, 344 (1986). Those standards were applied by the district court and are met in this case.

Contrary to Harris' contentions, the district court relied on more evidence than the items referred to in his motion for petition. Plaintiff admitted in his deposition that "he had numerous pictures of nude juvenile girls in his house," and officers searching his home found such. *See* Order of May 5, 2000 [169], pp. 49-50. Moreover, there was ample evidence collected by Detective Baggett regarding plaintiff's behavior towards children. *See id.* The district court also cites plaintiff's *own deposition* as evidence regarding the content of a videotape supporting probable cause for his arrest. *See id.* at 51. *Importantly, the plaintiff conceded that a review of the evidence seized from his home would lead one to conclude that he is sexually attracted to young girls*. *See* Harris Deposition, p. 280. Accordingly, there was more than arguable probable cause for his arrest, entitling defendants to qualified immunity.

As for the searches of Harris' home, the first search was determined by the district court to be subject to exigent circumstances as an armed felon (Harris' son) had fled into the home. *See* [169] at 38-39. Plaintiff offered no evidence to rebut this contention. Accordingly, the first nude child photograph was discovered *in plain view* by officers that had lawfully entered his home. *See* [169] at 41. Detective Baggett's subsequent investigation provided probable cause to obtain a search warrant based on the statements of neighborhood children regarding lewd photographs, videotapes, and Harris' acts of exposure, as well as letters written to them by Harris with inappropriate language.

See [169] at 43. Detective Baggett also interviewed an adult, Sondra London, who had lived with Harris and stated that Harris had videotapes depicting very young girls engaged in sexual acts. *See id.* Although Harris contended on appeal that Baggett lied about his investigation, he presented *no evidence* to support that allegation in opposition to summary judgment. *See id.* Accordingly, there is no reason why a reasonably well trained officer would have known the search of Harris' home illegal despite the magistrate's authorization.

In sum, there is no evidence to which Harris can point that establishes the elements of his claims. The officers in this case were entitled to qualified immunity, and Harris has not provided any basis on appeal to reverse the district court's judgment. The law on qualified immunity is clearly established on the facts of this case. Accordingly, petitioner presents nothing that meets this Court's standard for review.

CONCLUSION

The Petition for Writ of Certiorari should be denied because the justiciable concerns of Rule 10 are wholly lacking from this case. The district court and the Eleventh Circuit applied time-honored constitutional principles to the facts as presented in the record, and no basis exists to revisit these very clear and correct rulings.

Accordingly, Respondents pray that the certiorari petition be denied.

Respectfully submitted,

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